SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920.

No. 473.

GEORGE A. PORTER, SHERIFF OF NOBLE COUNTY, OKLAHOMA TERRITORY, AND O. T. MOSS, JAILER OF NOBLE COUNTY, OKLAHOMA,

APPELLANTS,

vs.

H. PRUNER, H. PRUNER & CO., A COPARTNERSHIP COMPOSED OF H. C. PRUNER, J. M. HOWARD AND C. A. PRUNER, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

(18,281.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 173.

GEORGE A. FOSTER, SHERIFF OF NOBLE COUNTY, OKLAHOMA TERRITORY, AND G. T. BRYAN, TREASURER OF NOBLE COUNTY, OKLAHOMA TERRITORY, APPELLANTS,

vs.

I. T. PRYOR, I. T. PRYOR & CO., A PARTNERSHIP COMPOSED OF I. T. PRYOR, J. H. MORRIS, AND HOWARD ROSS; C. A. KEERAN, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 17, 1902.

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a In the Supreme Court of the Territory of Oklahoma.

I. T. PRYOR; I. T. PRYOR AND CO., a Partnership Composed of I. T. Pryor, J. H. Morris, and Howard Ross; C. A. Keeran; Stafford Land and Cattle Co., a Foreign Corporation Doing Business in the Territory of Oklahoma under the Laws Thereof; M. L. Hite, and W. R. Moore; P. S. Weatherspoon and Phillip Weatherspoon, Partners Doing Business under the Firm Name and Style of Weatherspoon and Frank Weatherspoon & Son; S. P. Weatherspoon and Frank Weatherspoon, Doing Business under the Firm Name and Style of P. S. and F. Weatherspoon; P. S. Weatherspoon and Ed. T. Bomar, Partners Doing Business under the Firm Name and Style of Weatherspoon and Bomar; 101 Live Stock Company, a Corporation, Plaintiffs in Error,

vs.

GEORGE A. FOSTER, Sheriff of Noble County, Oklahoma Territory, and G. T. Bryan, as Treasurer of Noble County, Oklahoma Territory, Defendants in Error.

} No. 1042.

Citation.

UNITED STATES OF AMERICA, *ss:*

To I. T. Pryor; I. T. Pryor and Co., a partnership composed of I. T. Pryor, J. H. Morris, and Howard Ross; C. A. Keeran; Stafford Land & Cattle Co., a foreign corporation doing business in the Territory of Oklahoma under the laws thereof; M. L. Hite, W. R. Moore; P. S. Weatherspoon and Phillip Weatherspoon, partners doing business under the firm name and style of Weatherspoon and Son; S. P. Weatherspoon and Frank Weatherspoon, doing business under the firm name and style of P. S. and F. Weatherspoon; P. S. Weatherspoon and Ed. T. Bomar, partners doing business under the firm name and style of Weatherspoon and Bomar; 101 Live Stock Company, a corporation, and S. H. Harris, James B. Diggs, and W. L. Barnum, attorneys for plaintiffs in error, Greeting:

Whereas, George A. Foster, sheriff of Noble county, Oklahoma Territory and G. T. Bryan as treasurer of Noble county, Oklahoma Territory have lately appealed to the Supreme Court of the United States from the judgments and decrees rendered in the supreme court of the Territory of Oklahoma on the 6th day of July
b 1901 and on the 6th day of September 1901, in favor of you, the said I. T. Pryor; I. T. Pryor and Co., a partnership composed of I. T. Pryor, J. H. Morris and Howard Ross; C. A. Keeran; Stafford Land and Cattle Co., a foreign corporation doing business in the Territory of Oklahoma, under the laws thereof; M. L. Hite;

and W. R. Moore; P. S. Weatherspoon, and Phillip Weatherspoon, partners doing business under the firm name and style of Weatherspoon and and Son; S. P. Weatherspoon and Frank Weatherspoon, doing business under the firm name and style of P. S. and F. Weatherspoon; P. S. Weatherspoon, and Ed. T. Bomar, partners doing business under the firm name and style of Weatherspoon and Bomar, 101 Live Stock Company, a corporation, and having filed the security required by law you are therefore hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at the city of Washington, District of Columbia on to wit, the 6th day of October, 1901, at 9 o'clock, a. m. and within thirty days from the day this citation bears date, to do and receive what may pertain to justice to be done in the premises.

Given under my hand at the city of Guthrie in the Territory of Oklahoma on this 28 day of September, 1901.

JNO. H. BURFORD,
Chief Justice.

Service of the foregoing citation and due acceptance is hereby admitted this 30 day of September 1901.

A. H. HARRIS,
—— ——,
—— ——,
Attorneys for Plaintiffs in Error and Appellees.

c [Endorsed:] No. 1042. In the supreme court of the Territory of Oklahoma. I. T. Pryor, *et al.*, plaintiffs in error, *v.* George A. Foster, sheriff etc., *et al.*, defendants in error. Citation and service thereof. Filed Oct. 1 1901 Benj. F. Hegler, clerk supreme court. By —— —— deputy.

1 UNITED STATES OF AMERICA, *Territory of Oklahoma,* } ss:

In the Supreme Court.

Be it remembered, that on November 24, 1900, there was deposited, filed and docketed in the supreme court of the Territory of Oklahoma, a petition in error and case-made in the cause of I. T. Pryor, *et al.*, plaintiffs in error, *vs.*. Geo. A. Foster, sheriff Noble county, O. T., and G. T. Bryan, treasurer said county, defendants in error, and numbered 1042, which petition in error and case-made read in words and figures as follows, to wit:

2 In the Supreme Court of the Territory of Oklahoma.

I. T. PRYOR & Co., a Copartnership Composed of I. T. Pryor, J. H. Morris, and Howard Ross; I. T. Pryor, C. A. Keeran; The Stafford Land & Cattle Co., a Foreign Corporation Doing Business in the Territory of Oklahoma under the Laws Thereof; M. L. Hite, W. R. Moore; P. S. Witherspoon and Philip Witherspoon, Partners Doing Business under the Firm Name and Style of Witherspoon & Son; P. S. Witherspoon and Frank Witherspoon, Doing Business under the Firm Name and Style of P. S. & F. Witherspoon; P. S. Witherspoon and Ed. P. Bomar, Partners Doing Business under the Firm Name and Style of Witherspoon & Bomar, and The 101 Live Stock Co., a Corporation, Plaintiffs in Error,

vs.

GEO. A. FOSTER, Sheriff of Noble County, Oklahoma Territory, and G. T. Bryan, Treasurer of said County and Territory, Defendants in Error.

No. 1042.

Petition in Error.

Comes now the plaintiffs in error and for their cause of action against the defendants in error, and each of them, say:

That on the trial of the above-entitled cause in the district court of Noble county, Oklahoma Territory, that the district court made an error in the trial thereof in the following proceedings, to wit:

First. That the district court committed error in sustaining the demurrer to plaintiffs in error'- (plaintiffs below) petition, and to which said ruling of the court the plaintiffs in error (plaintiffs below) did then and there at the time except.

Second. That the trial court committed error on the trial of said cause in dissolving and setting aside the temporary order of injunction theretofore granted in said cause; to which action, ruling and judgment of the court the plaintiffs in error (plaintiffs below) did then and there at the time, duly except.

3 Plaintiffs in error aver that they have hereto attached a case-made in said cause, showing the errors herein complained of, marked Exhibit "A."

Wherefore, plaintiffs in error pray that on the hearing of this cause, that the honorable supreme court of the Territory of Oklahoma, will reverse and remand said cause on account of said error, to the district court of Noble county, Oklahoma Territory, commanding said court to overrule said demurrer, and to vacate the order dissolving and setting aside the temporary order of injunction granted in said cause.

S. H. HARRIS,
JAMES B. DIGGS,
W. L. BARNUM,
Attorneys for Plaintiffs in Error.

Filed Nov. 24, 1900.
BENJ. F. HEGLER,
Clerk Supreme Court.

Endorsed on back as follows, to wit:
No. 1042 I. T. Pryor *et al.*, *vs.* Geo. A. Foster, *et al.* Petition in error.—S. H. Harris, James B. Diggs & W. L. Barnum, att'ys for —.

4 In the Supreme Court of the Territory of Oklahoma.

I. T. Pryor & Co., a Copartnership Composed of I. T. Pryor, J. H. Morris, and Howard Ross; I. T. Pryor, C. A. Keeran; The Stafford Land & Cattle Co., a Foreign Corporation Doing Business in the Territory of Oklahoma under the Laws Thereof; M. L. Hite, W. R. Moore; P. S. Witherspoon and Philip Witherspoon, Partners Doing Business under the Firm Name and Style of Witherspoon & Son; P. S. Witherspoon and Frank Witherspoon, Doing Business under the Firm Name and Style of P. S. & F. Witherspoon; P. S. Witherspoon and Ed. P. Bomar, Partners Doing Business under the Firm Name and Style of Witherspoon & Bomar, and The 101 Live Stock Co., a Corporation, Plaintiffs,

vs.

Geo. A. Foster, Sheriff of Noble County, Oklahoma Territory, and G. T. Bryan, Treasurer of said County and Territory, Defendants.

} # 1042.

Waiver of Summons.

I, A. R. Museller, county attorney, and attorney for defendants in error, in the above-entitled cause, hereby waive the issuance of summons in said cause, and hereby enter my appearance in the same as attorney for, and on behalf of the defendants in error.
Dated Nov. 21, 1900.

A. R. MUSELLER,
Attorney for Defendants in Error.

Filed Nov. 24, 1900.

BENJ. F. HEGLER,
Clerk Supreme Court.

Endorsed on back as follows, to wit:
No. 1042. I. T. Pryor *et al.*, *vs.* G. A. Foster *et al.* Waiver of summons and entry of appearance.

5 In the District Court of Noble County, Oklahoma Territory.

I. T. PRYOR & Co., a Copartnership Composed of I. T. Pryor, J. H. Morris, and Howard Ross; I. T. Pryor, C. A. Keeran; The Stafford Land & Cattle Co., a Foreign Corporation Doing Business in the Territory of Oklahoma under the Laws Thereof; M. L. Hite, W. R. Moore; P. S. Witherspoon and Philip Witherspoon, Partners Doing Business under the Firm Name and Style of Witherspoon & Son; P. S. Witherspoon and Frank Witherspoon, Doing Business under the Firm Name and Style of P. S. & F. Witherspoon; P. S. Witherspoon and Ed. P. Bomar, Partners Doing Business under the Firm Name and Style of Witherspoon & Bomar, and The 101 Live Stock Co., a Corporation, Plaintiffs,

vs.

GEO. A. FOSTER, Sheriff of Noble County, Oklahoma Territory, and G. T. Bryan, Treasurer of said County and Territory, Defendants.

Case-made.

Be it remembered, that on the 18th day of July A. D. 1900, plaintiffs filed in the district court of Noble county, Oklahoma Territory, their petition against the said defendants, which is in the words and figures as follows, to wit:

6 In the District Court of Noble County, Oklahoma Territory.

I. T. PRYOR & Co., Copartership Composed of I. T. Pryor, J. H. Morris, and Howard Ross; I. T. Pryor, C. A. Keeran; Stafford Land & Cattle Co., a Foreign Corporation Doing Business in the Territory of Oklahoma under the Laws Thereof; M. L. Hite and W. R. Moore; P. S. Witherspoon and Philip Witherspoon, Partners Doing Business under the Firm Name and Style of Witherspoon & Son; P. S. Witherspoon and Frank Witherspoon, Doing Business under the Firm Name and Style of P. S. & F. Witherspoon; P. S. Witherspoon and Ed. P. Bomar, Partners Doing Business under the Firm Name and Style of Witherspoon & Bomar; 101 Live Stock Cattle Co., a Corporation, Plaintiffs,

vs.

GEORGE A FOSTER, Sheriff of Noble County, Oklahoma Territory, and G. T. Bryan, as Treasurer of Noble County, Oklahoma Territory, Defendants.

Petition.

Come now the above-named plaintiffs and they and each of them for their cause of action against the defendants and each of them say:

That they are non-residents of the Territory of Oklahoma, except M. L. Hite, who resides in the Ponca and Otoe Indian reservation, attached to Noble county for judicial purposes; and that the Stafford

Land & Cattle Company, is a corporation duly organized under the laws of the State of Texas, and doing business in the Territory of Oklahoma under the laws thereof; and the 101 Live Stock Cattle Company is a corporation under the laws of the State of Kansas.

Plaintiffs further aver and allege that they are the owners of the cattle and property set out and described in Schedule "A," hereto attached to this petition, and made a part hereof, the same as if herein in full set out; that each of said plaintiffs own the cattle set opposite his name in said schedule, and have owned the same for more than a year last past;

7 That said cattle are now situated in the Ponca & Otoe Indian reservation, which said reservation is attached to the said county of Noble for judicial purposes, and as a taxing district of said county; that said cattle were brought by said plaintiffs into the Territory of Oklahoma after the 1st day of April, 1899, and prior to the 1st day of November, 1899, for the purpose of being grazed on the lands situated in said Ponca and Otoe Indian reservation, and to be prepared for market and shipped therefrom; that before bringing said cattle into the said Territory of Oklahoma, and locating the same upon the said Indian reservation so attached to Noble county as aforesaid, that these plaintiffs and each of them paid taxes thereon in the State of Texas for the year 1899; that all of the cattle owned by each of said plaintiffs and set forth and described in Schedule "A," hereto attached, *was* duly listed and assessed for taxation in said State of Texas and the taxes for the year 1899 *was* duly assessed and levied upon said cattle in the said State of Texas under and by virtue of the laws of said State, and which said taxes so levied and assessed as aforesaid, *was* paid by these plaintiffs, and each of them, on that portion of said cattle set out in said Schedule "A" as belonging to him before said cattle *was* brought into the said Territory of Oklahoma, and placed in said Indian reservation;

Plaintiffs further aver and allege that after bringing said cattle into said Territory of Oklahoma as aforesaid, and placing the same upon said Indian reservation for the purposes above named, that one J. H. Nelson, the duly elected, qualified and acting tax assessor for Noble county, Oklahoma Territory, undertook to, and did assess the said cattle set out in said Schedule "A," for taxes for the year 1899, in Noble county, Oklahoma Territory; that the said J. H. Nelson, as said assessor listed to each of these plaintiffs the number of cattle set opposite his name in said Schedule "A," hereto attached and assessed to the value thereof as shown in said schedule and the amount of taxes as shown in said schedule; that in assessing said taxes the said J. H. Nelson acted without authority or warrant of law, and that by reason of said illegal and void assessment

8 so made by the said J. H. Nelson, as said assessment, the property of these plaintiffs, and that of each of them described in said Schedule "A" was extended upon the tax-rolls of said Noble county, and the board of county commissioners of said county caused to be levied and did levy against the said property taxes to be paid into the different funds of said county as follows, to wit:

Territorial	5.2 mills	Poor & insane	1 mill
Court	3 "	Supplies	2 "
Salary	6 "	County school	2 "
Road & bridge	2 "	Contingent	1 "
Sinking fund	4 "		

making a total of 26.2 mills, against the property of each and every one of these plaintiffs.

And these plaintiffs and each of them, further aver and allege that prior to the time the said J. H. Nelson assessed the property set opposite their names in Schedule "A," for the said territorial and county tax and returned the same, as provided by law, these plaintiffs, nor either of them, had the opportunity by affidavit or otherwise, to show the said J. H. Nelson that said property had been duly and regularly listed for taxes, and the taxes had been duly and regularly levied and assessed thereon in the State from which it was brought into the said Territory, and that said plaintiffs and each of them had paid said taxes so assessed and levied against their property as aforesaid, before bringing the same into the said Territory of Oklahoma and before the said J. H. Nelson assessed the same; that said J. H. Nelson at the time of assessing said property assessed the same without the presence of these plaintiffs or either of them, and without their knowledge and consent, and by reason of said act of the said J. H. Nelson in assessing said property without the presence and without the knowledge of these plaintiffs or either of them, they and each of them were deprived of the opportunity of showing by affidavit, or otherwise, that the taxes so assessed on said property as aforesaid, in the State of Texas had been paid.

9 These plaintiffs further aver and allege that said assessment is illegal and void in this, to wit: that the said J. H. Nelson as assessor of said county of Noble, had no authority under the laws of the said Territory to assess property located and situated in the Ponca and Otoe Indian reservation so attached to said Noble county as aforesaid; but that on the contrary no legal assessment could be made of plaintiffs' property or either of them, except by a person duly and regularly appointed by the board of county commissioners of Noble county, for the purpose of going into said Indian reservation and assessing the property located therein; and that the said J. H. Nelson was not appointed by said board of county commissioners of Noble county to go into said Indian reservation and to assess the property therein situated for taxation, and did not pretend or claim to have been so appointed.

Plaintiffs further aver and allege that the said assessment of their property and that of each of them, so made by the said J. H. Nelson, as aforesaid, for the year 1899, is void and illegal in this to wit: that the said assessment was made by said J. H. Nelson, without viewing said property as required by law before making an assessment thereof.

Plaintiffs further aver and allege that the said assessment so made by said J. H. Nelson, as aforesaid, of their property, and that of each of them, is void in this to wit: that the said plaintiffs, nor

either of them, received or will receive any benefit from any of the funds for the benefit of which said taxes are levied and assessed, save and except the court and territorial funds.

These plaintiffs further aver and allege that the said assessment of their property and that of each of them for taxes for the year 1899, so made by the said J. H. Nelson, as aforesaid, is void and illegal in this, that under the laws of the Territory of Oklahoma governing the assessment of taxes on property in said Indian reservation that no taxes could be levied, assessed or collected for the said year of 1899, save and except for the territorial and
10 court funds, and each and all of said assessments so made by said J. H. Nelson, as aforesaid, except for said territorial and court funds, — without warrant or authority of law.

These plaintiffs and each of them further aver and allege that after the said J. H. Nelson, without authority or warrant of law had assessed their property as aforesaid, and that of each of them, that they, and each of them, appeared before the board of county commissioners of Noble county, Oklahoma Territory, on to wit: — day of June, 1899, the same being the day set by said board for passing on and equalizing taxes, and there showed to the said board of county commissioners that they, and each of them, had paid taxes on said property in the State of Texas for the year 1899, and that thereby and by reason thereof, said property was not liable for taxation in the Territory of Oklahoma for the year 1899, and also represented to said board of county commissioners that in no event should said property of these plaintiffs, or that of either of them, be liable to any taxes in the Territory of Oklahoma, save that for territorial and court funds; and then and there requested said board of county commissioners to release all of said taxes so levied against their property as aforesaid, and that each of them, which said demand and request on the part of these plaintiffs and that of each of them, to the said board of county commissioners was then and there by said board of county commissioners, granted and the said property of these plaintiffs and that each of them set out and described in said Schedule "A," was stricken from the tax-rolls and said property declared by said board of county commissioners to be released from the payment of any and all taxes for the year 1899;

And plaintiffs further aver and allege, that afterwards, without the knowledge or consent of these plaintiffs, or that of either of them, and without notice to either of them, the said board of county commissioners rescinded their said above action and placed all of said property on said tax-rolls of said county, and extended each of the above-named levies for the above-named amounts thereon; and said property was held by said board to be liable to taxation
11 and to pay taxes, and to be assessed for each and every of the above-named funds;

That thereafter, on to wit, the — day of ——, 1900, that G. T. Bryan, the duly elected, qualified and acting treasurer of Noble county, Oklahoma Territory, issued tax warrants, directed to the sheriff of Noble county, Oklahoma Territory, demanding him to collect from these plaintiffs, and each of them, the amount of said taxes

set opposite their names in the Schedule "A," hereto attached and in default of the payment of said taxes by these plaintiffs and each of them, commanding said sheriff to levy on the property of these plaintiffs and each of them, and to sell the same for the satisfaction of the said taxes after advertising the same as required by law; that said warrants so issued by the said G. T. Bryan, as treasurer of said county as aforesaid, *was* by him delivered to George W. Foster, sheriff of Noble county, as aforesaid, for the purpose of collection and enforcement; and that the said George W. Foster, as sheriff of Noble county, as aforesaid, has levied upon, taken into his possession and now detains the property of these plaintiffs set out and described in Schedule "A" hereto attached, for the purpose of selling the same in satisfaction of the claim for said taxes; that the said George W. Foster, sheriff as aforesaid, has proceeded to advertise the property of these plaintiffs, and that of each of them, as shown in Schedule "A" hereto attached, for sale for satisfaction of the said taxes so illegally and unlawfully levied, as aforesaid.

Plaintiffs further aver and allege that they, and each of them, before the commencement of this suit, and at the times said taxes became due, have offered to pay to the county treasurer of Noble county, and to the said George W. Foster, sheriff of said Noble county the amount of the territorial and court tax, assessed against their property as shown in Schedule "A" hereto attached, as aforesaid; that the said treasurer of Noble county, and the said George W. Foster, as sheriff of said Noble county, refused to receive the amount of the taxes so levied and assessed against the property of plaintiffs that amounted to the territorial and court funds, but insisted upon these
12 plaintiffs and each of them, paying the full amount of the levy made on said property by the board of county commissioners of Noble county, Oklahoma Territory, and in default of plaintiffs paying the full amount of said illegal and void assessment and levy, the said George W. Foster is now proceeding to, and will, unless restrained by this honorable court, sell said property for the payment and liquidation of said taxes so levied and assessed against the property of these plaintiffs, and that of each of them, without authority or warrant of law, as aforesaid.

And the plaintiff M. L. Hite, avers and alleges that the property described in Schedule "A," assessed and levied upon and advertised for sale as the property of John Weatherspoon, is now and has been ever since about the 1st of March, 1900, the property of the said M. L. Hite, and was bought by him from the said John Weatherspoon after the same was assessed for taxes for the year 1899.

Plaintiffs further aver and allege that while recognizing that the said J. H. Nelson, as assessor of the said county of Noble, has no authority or right to assess their said property, or that either of them for taxes for the year 1899, under and by virtue of his office of county assessor, that they also recognize the fact that their said property was liable for taxes to the amount of the taxes levied by the board of county commissioners for the territorial and court funds, and are now and have at all times, been willing to pay the amount due for said territorial and court funds, in case said assessment should

be found to be legal, and hereby offer and tender into open court the amount of said territorial and court funds, if the court shall determine said pretended assessment, to be legal, and hereby offer to pay such other taxes, charges and assessments against their said property, and that of each of them, as the court may find to be legal and valid.

By permission plaintiffs amend and say that they have paid all taxes levied for court and territorial funds and filed the receipts therefor herewith pursuant to the order of the judge of this court; also all costs claimed by sheriff, except commission deposited with the clerk of this court.

13 Wherefore plaintiffs and each of them, pray that this court will grant a temporary injunction, restraining, enjoining, and prohibiting the said Geo. W. Foster, as sheriff of Noble county, from procceeding to advertise, and sell their said property, and that of either of them, for taxes and that the said G. T. Bryan, as treasurer of said Noble county, be enjoined, restrained and prohibited from further issuing warrants to the said Geo. W. Foster, as sheriff of said county, demanding him to seize, advertise, or sell the property of plaintiffs described in said Schedule "A," or that of either of them, for the taxes for the year 1899; and that on the final hearing of this case plaintiffs, and each of them, hereby pray that said temporary order be made permanent, and that the said G. T. Bryan, as treasurer of said county, and the said George W. Foster, as sheriff of said Noble county, be perpetually enjoined, and restrained from issuing any tax warrant on the said property of plaintiffs described in said Schedule "A," or any part thereof, or that of either of them, or from levying upon, advertising, or selling the said property or any part thereof, for said taxes for the said year 1899; and that they have such other and further relief as in good conscience and equity the court may hold them entitled to, and that they have and recover of the defendants, and each of them, their reasonable costs in this behalf expended.

S. H. HARRIS,
W. L. BARNUM, AND
JAS. B. DIGGS,
Attorneys for Plaintiffs.

TERRITORY OF OKLAHOMA, } ss:
County of Noble, }

We, I. T. Pryor and C. A. Keeran and M. L. Hite being first duly sworn, each for himself on oath states; that he is the plaintiff in the above-entitled cause, and that he has read the above and foregoing petition and knows of his own personal knowledge that the matters and things stated therein are true.

I. T. PRYOR.
M. L. HITE.
C. A. KEERAN.

Subscribed and sworn to before me this 18 day of July, 1900.
[SEAL.]
JAY E. PICKARD, *Clerk*,
By W. S. LAMB, *Deputy*.

Property.	Valuation.	Total tax.	Court and territorial tax.	Date of warrant.	Date of alias.	Date of levy.	Date of sale.	Property levied upon as shown by return on warrant.
I. T. Pryor..... 2 mules 30 head horses.	528.00	14.34	4.32	Oct. 13, 1899	June 25, 1900	June 28, 1900	July 27, 1900, 1 p. m.	10 steers, branded E V on side.
C. A. Keeran..... 7500 head cattle.....	108432.00	2846.60	889.13	Oct. 13, 1899	June 25, 1900	June 28, 1900	July 24, 1900, 1 p. m.	400 cattle (steers) branded with "Comet" brand on side.
I. T. Pryor & Co..... 1400 " "	24266.00	641.26	198.99	Oct. 13, 1899	June 27, 1900	June 28, 1900	July 27, 1900, 1 p. m.	140 steers branded "E V" on side.
Stafford Land & Cattle Co. 2000 " "	24000.00	641.80	196.80	Oct. 13, 1899	June 27, 1900	June 28, 1900	July 25, 1900, 1 p. m.	190 cattle branded "E V" on side.
" " " 3346 " " ..... 2 horses, 1 carriage $100 household goods $3000 cash.	40140.00	1060 66 1702.40	329.14	Oct. 13, 1899	June 27, 1900	June 29, 1900	July 25, 1900, 2 p. m.	500 cattle branded "E V" on side.
M. L. Hite..... $200 grain	3346.00	98.66	27.43	Oct. 12, 1899	June 27, 1900	June 29, 1900	....	100 cattle branded "Mill Iron" brand.
W. R. Moore..... 2000 head cattle.....	28800.00	759.26	236.16	Oct. 13, 1899	June 25, 1900	June 28, 1900	July 31, 1900, 1 p. m.	200 steers brand-"O" circle on left side and "A" on left shoulder.
Witherspoon & Son..... 1300 " "	24960.00	661.66	204.67	Oct. 13, 1899	June 25, 1900	June 28, 1900	July 28, 1900, 1 p. m.	200 steers branded "—y" on right side and "y" on left side.
P. S. & F. Witherspoon..... 4500 " "	81247.00	2132.66	666.22	Oct. 13, 1899	June 27, 1900	June 29, 1900	July 28, 1900, 2 p. m.	200 cattle branded "—y" on right side and "y" on left side.
John F., M. L. Hite..... 1120 " "	16128.00	429.16	132.24	Oct. 13, 1899	June 27, 1900	June 29, 1900	July 30, 1900, 1 p. m.	80 cattle branded "Mill Iron" brand.
Witherspoon & Bomar..... 4100 " " ..... 100 hogs, $400 imp. 60 horses 15 mules 4 wagons.	59040.00	1550.84	484.12	Oct. 13, 1899	June 27, 1900	June 29, 1900	July 30, 1900, 2 p. m.	200 cattle branded "9" on side.
101 Live Stock Co..... 1050 cattle 100 sheep & goats.	11535.00	302.70	94.58	Oct. 28, 1899	June 26, 1900	June 27, 1900	.....	100 cattle branded "101" on left side.

[Endorsed:] 1220. In the district court of Noble county, Oklahoma Territory. I. T. Pryor *et al.*, plaintiffs, *vs.* George A. Foster, sheriff of Noble county, O. T., and G. T. Bryan, as treasurer of Noble county, O. T., defendants. Petition. Filed July 18, 1900. Jay E. Pickard, clerk dist. court, by W. S. Lamb, deputy.

15 That thereafter, and on the 18 day of July, A. D. 1900, the Honorable Bayard T. Hainer, judge of the district court in and for said county, at chambers in said county, granted a temporary injunction in said cause, which said order of injunction is in the words and figures as follows, to wit:

16 In the District Court of Noble County, Oklahoma Territory.

I. T. PRYOR, I. T. PRYOR & Co., a Partnership Composed of I. T. Pryor, J. H. Morris, and Howard Ross; C. A. Keeran; Stafford Land & Cattle Co., a Foreign Corporation Doing Business in the Territory of Oklahoma under the Laws Thereof; M. L. Hite and W. R. Moore; P. S. Weatherspoon and Philip Weatherspoon, Partners Doing Business under the Firm Name and Style of Weatherspoon & Son; P. S. Weatherspoon and Frank Weatherspoon, Doing Business under the Firm Name and Style of P. S. & F. Weatherspoon; P. S. Weatherspoon and Ed. T. Bomar, Partners Doing Business under the Firm Name and Style of Weatherspoon & Bomar, 101 Live Stock Company, a Corporation, Plaintiffs,

vs.

GEORGE W. FOSTER, Sheriff of Noble County, Oklahoma Territory, and G. T. Bryan, as Treasurer of Noble County, Oklahoma Territory, Defendants.

Order of Injunction.

And now upon this 18th day of July, A. D. 1900, this cause comes on before me, the undersigned judge of the above-entitled court at chambers in the city of Perry, upon the application of the plaintiffs for a temporary injunction, the plaintiffs appearing by S. H. Harris, and James B. Diggs, their attorneys, and the defendants appearing by A. R. Museller, county attorney of said county; and the application, together with the petition herein and the proofs of plaintiffs, being duly considered, it is found that said plaintiffs and each of them, are entitled to the temporary injunction prayed for.

It is further ordered, adjudged and decreed that the said plaintiffs have a temporary injunction, enjoining and restraining the said defendants and each of them, from issuing tax warrants against the property of said plaintiffs, and that of each of them, described in said petition, and the schedule thereto annexed as Exhibit "A," and from advertising for sale, or proceeding to sell said property, or any part thereof, and that the said defendants, and each of them, be enjoined from interfering with the said plaintiffs and each of
17 them, in the charge, management, control and custody, of that part of the said property set out in said petition and schedule, belonging to each of said plaintiffs.

It is further ordered, adjudged and decreed that this order is to go into force and be of effect as to each of the above-named plaintiffs, on the giving of a good and sufficient bond by each of said

plaintiffs to cover the amount of taxes claimed to be due by said defendants to the said county of Noble, as shown in Schedule "A," in double the amount of said taxes; said bonds to be approved by the clerk of this court.

It is further ordered, that in addition to the giving of said bonds, this order shall take effect only upon the payment to the county treasurer of the amount of the court and territorial funds, due said county as shown by said Schedule "A," which amount shall be paid upon this order, without prejudice to the rights of the parties to this action, and also subject to their right to return of the same from the said county, in the event that said taxes shall be held to be illegal and void; and the said plaintiffs, as a condition of this order, shall also deposit with the clerk of this court, the amount of the sheriff's fees accrued upon said taxes warrants, to be held subject to the final determination of this action; said fees being shown by memorandum thereof filed in this cause; and the said plaintiffs are required to file the receipts of the said treasurer and the said clerk for the money required to be paid under this order, with the files in this case.

It is further ordered, adjudged and decreed that on the giving of said bonds as above set out, and upon the payment of the amount of said court and territorial funds, by either of said plaintiffs, that this order shall go into force and be of effect as to him, or them, and remain in full force and effect until the further order of the district court of Noble county, or the judge thereof.

BAYARD T. HAINER,
Judge Dist. Court.

18 Said order of injunction is endorsed on back as follows, to wit:

I. T. Pryor & Co., C. A. Keeran, *et al.*, plaintiffs, *vs.* G. W. Foster, sheriff of Noble Co., O. T., and G. T. Bryan, as treasurer Noble Co., O. T., defendants.—Order of injunction—Copy—Filed July 19, 1900. Jay E. Pickard, clerk by W. S. Lamb, deputy.

19 That at the time of granting said order of injunction the said judge permitted the said plaintiffs to amend their petition to show compliance with said order by payment of the amounts referred to therein, and said petition was thereupon amended upon page eight (8) thereof by interlining the words with reference to said payments and was also amended by attaching thereto as a part of said petition, the receipts for the said payments; which said exhibits showing payments in compliance with said order are in the words and figures as follows, to wit:

20 *Sheriff's Fees.*

C. A. Keeran, No. 1135 present 5.40
7.50

Total 12.90

M. L. Hite No. 1119 1st levy costs $10.50 present levy 4.60

Total 15.10

I. T. Pryor & Co., No. 1165, 1st levy costs $12.50 present levy $12.10

Total 24.60

I. T. Pryor 1st levy costs 7.50 present levy 8.50

Total 16.00

Stafford Land & Cattle Co., No. 1172, 1st levy 12.50 present levy 12.10

Total 24.60

Stafford Land & Cattle Co., No. 1173, 1st levy 8.50 present levy 12.10

Total 20.60

Witherspoon & Son No. 1196 1st levy 7.10 present levy 7.10

Total 14.20

P. S. & F. Witherspoon, No. 1197, 1st levy 3.50 present levy 7.10

Total 10.60

Jno. F. Witherspoon, No. 1198, 1st levy 6.10 present levy 7.10

Total 13.20

Witherspoon & Bomar, No. 1199, 1st levy 3.50 present levy 7.10

Total 10.60

101 L. Stock Co., 6.20

Total 6.20

W. R. Moore, No. 1159, 1st costs 5.45, present levy 7.10

Total 12.55

168.25

Endorsed on back as follows, to wit:
Filed July 23, 1900. Jay E. Pickard, cl'k. By W. S. Lamb, deputy.

21 PERRY, OKLAHOMA, *July* 21, 1900.

Received of S. H. Harris for W. R. Moore sum of twelve and $\frac{55}{100}$ dollars ($12.55) deposit for sheriff's costs on tax warrants in case 1220, Pryor *vs.* Foster *et al.*

JAY E. PICKARD, *Clerk*,
By W. S. LAMB, *Deputy.*

Endorsed as follows: Filed July 23, 1900. Jay E. Pickard, cl'k. By W. S. Lamb, deputy.

PERRY, OKLAHOMA, *July* 18, 1900.

Received of M. L. Hite, the sum of thirty-eight and $\frac{90}{100}$ dollars ($38.90) deposit for sheriff's costs in case No. 1220, Pryor *et al. vs.* Foster *et al.* On tax warrants.

JAY E. PICKARD, *Clerk*,
By W. S. LAMB, *Deputy*.

Endorsed as follows: Filed July 23, 1900. Jay E. Pickard, cl'k, by W. S. Lamb, deputy.

For—
P. S. & F. Witherspoon,
Witherspoon & Son,
J. F. Witherspoon,
Witherspoon & Bomar,
M. L. Hite.

Additional paid by S. H. Harris for Hite July 19, 1900, twenty-four and $\frac{80}{100}$ dollars ($24.80)

JAY E. PICKARD, *Clerk*,
By W. S. LAMB, *Deputy*.

PERRY, OKLAHOMA, *July* 19, 1900.

Received of S. H. Harris the sum of six and $\frac{20}{100}$ dollars ($6.20) for deposit for sheriff's costs on tax warrant involved in case No. 1220, Pryor *et al. vs.* Foster *et al.*, paid for 101 Live Stock Co.

JAY E. PICKARD, *Clerk*,
By W. S. LAMB.

This receipt is endorsed on back as follows, to wit:
Filed July 23, 1900. Jay E. Pickard, clerk, by W. S. Lamb, deputy.

22 PERRY, OKLAHOMA, *July* 18, 1900.

Received of C. A. Keeran, the sum of $12.90 to be held on deposit for sheriff's costs on tax warrant in case No. 1220, Pryor *et al. vs.* Foster, sheriff.

JAY E. PICKARD, *Clerk*,
By W. S. LAMB, *Deputy*.

Endorsed as follows: July 23, 1900. Jay E. Pickard, cl'k. By W. S. Lamb, deputy.

PERRY, OKLAHOMA, *July* 18, 1900.

Received of I. T. Pryor, for I. T. Pryor, I. T. Pryor and Co., S. Stafford Land and Cattle Co., the sum of eighty-five and $\frac{80}{100}$ dollars ($85.80) deposit for sheriff's costs on tax warrant in case No. 1220, Pryor *et al. vs.* Foster *et al.*

JAY E. PICKARD, *Clerk*,
By W. S. LAMB, *Deputy*.

This receipt is endorsed on back as follows, to wit:
Filed July 23, 1900. Jay E. Pickard, clerk, by W. S. Lamb, deputy.

23 County treasurer's office, Noble county.

Tax rates:
Territorial..... 5.2
County 21.0

Receipt No. 2883.

PERRY, OKLA., *July* 18, 1900.

Received of C. A. Keeran the sum $— in full for court and territorial tax of the taxes due and unpaid on the property described below, the same being for the taxes due for the year 1899.

Description.	S. L.	T.	R. B.	School dist. No.	Territorial equalized value.	Consolidated territorial.	Cons. Co. twp. and municipal tax.	Dist. school tax.			
.....	.....	.....	.....	.....	108432	.....	.....	.....	.....	.....	Total 889.14
Court and territorial tax only by order of district court.											

Personal .....
Rebate or penalty .. ..

Total.....

G. T. BRYAN,
Treasurer, Noble County.

—— ——, *Deputy.*

24 Filed July 23, 1900.
JAY E. PICKARD, *Clk,*
By W. S. LAMB, *Deputy.*

Noble County Tax Levies for 1899.

Salary fund	6 mills	Contingent fund.....	1 mills
Court fund.....	3 "	County school fund.....	2 "
Road and bridge fund.	2 "	Sinking fund.....	4 "
Supply fund.....	2 "		
Poor and insane fund.....	1 "	Total.....	21 mills

Territorial Purposes.

For general territorial tax.....	3 mills	For the support of the Colored Agricultural and Normal university at Langston.....	1 mills
For the erection and support of a normal school at Edmond.	5 "		
For the support of a normal school at Alva.	5 "	For the support of a school for the blind.....	1 "
For the erection and support of the university at Norman...	5 "		
For the support of the Agricultural and Mechanical college at Stillwater.....	1 "	Total.....	5.2 mills

Township Levies.

	Gen.	R. & B.	Judg.	Total.		Gen.	R. & B.	Judg.	Total.
Auburn.. .	5	5	..	10	Noble.....	5	5	..	10
Antryr	3	7	5	15	Oak Dale .	1	4-2	..	10
Black Bear ..	1	6	3	10	Red Rock ...	3	5	..	8
Bunch Creek.	5	5	..	10	Watkins	3	5	..	8
Glen Rose...	5	5	..	10	White Rock .	5	5	..	10
Lowe.....	2-2	7-2	7-2	17-2					

City Levies.

For street-bridge fund.....	2 mills	For sinking fund	4 mills
For fire & water supply fund.	2-2 "	For judgment fund.....	5 "
For contingent fund	½ "		
For street-lighting fund....	5 "	Total.....	19 "

School-district Levies.

Dist.	Mills.	Dist.	Mills.	Dist.	Mills.	Dist.	Mills.
2	20	32	20	17	20	48	20
3	20	33	5	18	20	49	15
4	20	34	20	19	5	50	15
5	12-2	35	20	20	20	51	20
6	20	37	20	21	20	52	15
7	20	38	15	22	20	53	20
8	15	39	15	23	20	54	20
9	20	40	20	24	20	55	20
10	20	41	10	25	20	56	20
11	20	42	20	26	20	57	20
12	20	43	20	27	12-2	58	20
13	15	44	20	28	15	59	20
14	20	45	20	29	20	60	20
15	20	46	20	30	15	61	20
16	20	47	8	31	20	..	..

25

School-district Interest and Judgment Levies.

Dist.	Sinking.	Judg.	Interest.	Dist.	Sinking.	Judg.	Interest.
3	3	.....	.....	30	2	7½	.... .
7	3	.. ...	.....	34	.... .	20	.....
8	3	.....	.....	35	.....	3	.....
14	3	.....	.....	37	3	.....	.... .
15	3	.....	.....	38	2	.....	.....
16	.....	20	.....	39	3	.....	.....
17	.....	10	.....	42	4	.. ..	.....
18	3	.....	.....	43	2	.....	.....
20	3	. ...	.....	44	2	.....	.....
23	2	.....	.....	45	.....	10	.....
24	2	.....	.....	49	3	.....	.. ...
25	4	.....	.....	50	.....	35	.....
26	15	.....	.....	51	3	.....	.....
27	2	.....	.....	52	1	5	4
28	2	.....	.....	59	2	10	.....
29	3	.....	.....	60	3	10	.....

26

County treasurer's office, Noble county.

Tax rates:
Territorial 5.2
County 21.0

Receipt No. 2889.

PERRY, OKLA., *July* 18, 1900.

Received of P. S. & F. Witherspoon the sum of $— in full for court & territorial tax of the taxes due and unpaid on the property described below, the same being the taxes due for the year 1899.

Description.	S. L.	T.	R. B.	School dist. No.	Territorial equalized value.	Consolidated territorial.	Cons. Co. twp. and municipal tax.	Dist. school tax.			
.....	.....	.....	.....	.....	21247	.....	.....	.....	.....	.....	Total 662.22
Court and territorial tax only by order of the district court.											

Personal .....
Rebate or penalty .....

Total .....

G. T. BRYAN,
Treasurer, Noble County.

——, *Deputy.*

27 *School-district Interest and Judgment Levies.*

Dist.	Sinking.	Judg.	Interest.	Dist.	Sinking.	Judg.	Interest.
3	3	.....	.....	30	2	7½	.....
7	3	.....	.....	34	.....	20	.....
8	3	.....	.....	35	.....	3	.....
14	3	.....	.....	37	3	.....	.....
15	3	.....	.....	38	2	.....	.....
16	.....	20	.....	39	3	.....	.....
17	.....	10	.....	42	4	.....	.....
18	3	.....	.....	43	2	.....	.....
20	3	.....	.....	44	2	.....	.....
23	2	.....	.....	45	.....	10	.....
24	2	.....	.....	49	3	.....	.....
25	4	.....	.....	50	.....	35	.....
26	15	.....	.....	51	3	.....	.....
27	2	.....	.....	52	1	5	4
28	2	.....	.....	59	2	10	.....
29	3	.....	.....	60	3	10	.....

28 County treasurer's office, Noble county.

Tax rates:
Territorial..... 5.2
County..... 21.0

Receipt No. 2891.

PERRY, OKLA., *July* 18, 1900.

Received of Witherspoon & Bomar the sum of $— in full for court & territorial tax of the taxes due and unpaid on the property described below, the same being the taxes due for the year 1899.

Description.	S. L.	T.	R. B.	School Dist. No.	Territorial equalized value.	Consolidated territorial.	Cons. Co. twp. and municipal tax.	Dist. school tax.			
.....	.....	.....	.....	.....	59040	.....	.....	.....	.....	.....	484.12
Court and territorial tax only by order of the district court.											

Personal..... .....
Rebate or penalty..... .....

Total..... .....

G. T. BRYAN,
Treasurer, Noble County.

—— ——, *Deputy.*

29 Filed July 23, 1900.
JAY E. PICKARD, *Clerk,*
By W. S. LAMB, *Deputy.*

Noble County Taxes Levies for 1899.

Salary fund.....	6 mills	Contingent fund.....	1 mills
Court fund.....	3 "	County school fund.....	2 "
Road and bridge fund.....	2 "	Sinking fund.....	4 "
Supply fund.....	2 "		
Poor and insane fund.....	1 "	Total.....	21 mills

Territorial Purposes.

For general territorial tax	3 mills	For the support of the Colored Agricultural and Normal university at Langston	1 mills
For the erection and support of a normal school at Edmond	5 "	For the support of a school for the blind	1 "
For the support of a normal school at Alva	5 "	Total	5.2 mill-
For the erection and support of the university at Norman.	5 "		
For the support of the Agricultural and Mechanical college at Stillwater	1 "		

Township Levies.

Auburn	5	5	..	10	Noble	5	5	..	10
Antryr	3	7	5	15	Oak Dale	1	4–2	4–2	10
Black Bear	1	6	3	10	Red Rock	3	5	..	8
Bunch Creek	5	5	..	10	Watkins	3	5	..	8
Glen Rose	5	5	..	10	White Rock	5	5	..	10
Lowe	2–2	7–2	7–2	17–2					

City Levies.

For street-bridge fund	2 mills	For sinking fund	4 mills
For fire & water supply fund	2–2 "	For judgment fund	5 "
For contingent fund	½ "	Total	19 mills
For street-lighting fund	5 "		

School District Levies.

Dist.	Mills.	Dist.	Mills.	Dist.	Mills.	Dist.	Mill-.
2	20	32	20	17	20	48	20
3	20	33	5	18	20	49	15
4	20	34	20	19	5	50	15
5	12–2	35	20	20	20	51	20
6	20	37	5	21	20	52	15
7	20	38	15	22	20	53	20
8	15	39	5	23	20	54	20
9	20	40	20	24	20	55	20
10	20	41	10	25	20	56	20
11	20	42	20	26	20	57	20
12	20	43	20	27	12–2	58	20
13	15	44	20	28	15	59	20
14	20	45	20	29	20	60	20
15	20	46	20	30	15	61	20
16	20	47	8	31	20	..	...

School-district Interest and Judgment Levies.

Dist.	Sinking.	Judg.	Interest.	Dist.	Sinking.	Judg.	Interest.
3	3	.....	.....	30	2	7½	.....
7	3	.....	.....	34	.....	20	.....
8	3	.....	.....	35	.....	3	.....
14	3	.....	.....	37	3	.....	.....
15	3	.....	.....	38	2	.....	.....
16	.....	20	.....	39	3	.....	.....
17	.....	10	.....	42	4	.....	.....
18	3	.....	.....	43	2	.....	.....
20	3	.....	.....	44	2	.....	.....
23	2	.....	.....	45	.....	10	.....
24	2	.....	.....	49	3	.....	.....
25	4	.....	.....	50	.....	35	.....
26	15	.....	.....	51	3	.....	.....
27	2	.....	.....	52	1	5	4
28	2	.....	.....	59	2	10	.....
29	3	.....	.....	60	3	10	.....

31 County treasurer's office, Noble county.

Tax rates:
Territorial..... 5.2
County..... 21.0

Receipt No. 2886.

PERRY, OKLA., *July* 18, 1900.

Received of M. L. Hite the sum of $— in full for court & territorial tax of the taxes due and unpaid on the property described below, the same being the taxes due for the year 1899.

Description.	S. L.	T.	R. B.	School dist. No.	Territorial equalized value.	Consolidated territorial.	Cons. Co. twp. and municipal tax.	Dist. school tax.			
.....	.....	.....	.....	.....	3346	.....	.....	.....	.....	.....	Total 27.43
Court and territorial tax only by order of the district court.											

Personal.....
Rebate or penalty.....

Total.....

G. T. BRYAN,
Treasurer, Noble County.

—— ——, *Deputy.*

32 Filed July 23, 1900.
JAY E. PICKARD, *Clerk*,
By W. S. LAMB, *Deputy.*

Noble County Taxes Levies for 1899.

Salary fund.....	6 mills	Contingent fund	1 mills
Court fund.....	3 "	County school fund.....	2 "
Road & bridge fund.....	2 "	Sinking fund.....	4 "
Supply fund.....	2 "		
Poor and insane fund.....	1 "	Total.....	21 mills

Territorial Purposes.

For general territorial tax.....	3 mills	For the support of the Colored Agricultural and Normal university at Langston.....	1 mill
For the erection and support of a normal school at Edmond..	5 "	For the support of a school for the blind..	1 "
For the support of a normal school at Alva	5 "	Total.....	5.2 mills
For the erection and support of the university at Norman ...	5 "		
For the support of the Agricultural and Mechanical college at Stillwater.....	1 mill		

Township Levies.

Auburn.....	5	5	..	10	Noble.....	5	5	..	10
Antryr.....	3	7	5	15	Oak Dale.....	1	4-2	4-2	10
Black Bear.....	1	6	3	10	Red Rock.	3	5	..	8
Bunch Creek	5	5	..	10	Watkins	3	5	..	8
Glen Rose.....	5	5	..	10	White Rock	5	5	..	10
Lowe..... ..	2-2	7-2	7-2	17-2					

City Levies.

For street-bridge fund.....	2 mills	For sinking fund	4 mills
For fire & water supply fund.	2-2 "	For judgment fund	5 "
For contingent fund.....	½ "		
For street-lighting fund.....	5 "	Total	19 mills

School-district Levies.

Dist.	Mills.	Dist.	Mills.	Dist.	Mills.	Dist.	Mills.
2	20	32	20	17	20	48	20
3	20	33	5	18	20	49	15
4	20	34	20	19	5	50	15
5	12-2	35	20	20	20	51	20
6	20	37	5	21	20	52	15
7	20	38	15	22	20	53	20
8	15	39	5	23	20	54	20
9	20	40	20	24	20	55	20
10	20	41	10	25	20	56	20
11	20	42	20	26	20	57	20
12	20	43	20	27	12-2	58	20
13	15	44	20	28	15	59	20
14	20	45	20	29	20	60	20
15	20	46	20	30	15	61	20
16	20	47	8	31	20	..	..

33

School-district Interest and Judgment Levies.

Dist.	Sinking.	Judg.	Interest.	Dist.	Sinking.	Judg.	Interest.
3	3	.....	.....	30	2	7½	.....
7	3	.....	.....	34	.....	20	.....
8	3	.....	.....	35	.....	3	.....
14	3	.....	.....	37	3	.....	.....
15	3	.....	.....	38	2	.....	.....
16	.....	20	.....	39	3	.....	.....
17	.....	10	.....	42	4	.....	.....
18	3	.....	.....	43	2	.....	.....
20	3	.....	.....	44	2	.....	.....
23	2	.....	.....	45	.....	10	.....
24	2	.....	.....	49	3	.....	.....
25	4	.....	.....	50	.....	35	.....
26	15	.. ...	.....	51	3	.....	.. ...
27	2	.....	.....	52	1	5	4
28	2	....	.. ...	59	2	10	.....
29	3	.....	.. ...	60	3	10	.....

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Tax rates:
Territorial..... 5.2
County..... 21.0

County treasurer's office, Noble county.

Receipt No. 2887.

PERRY, OKLA., *July* 18, 1900.

Received of W. R. Moore the sum of $— in full for court and territorial tax of the taxes due and unpaid on the property described below, the same being the taxes due for the year 1899.

Description.	S. L.	T.	R. B.	School dist. No.	Territorial equalized value.	Consolidated territorial.	Cons. Co. twp. and municipal tax.	Dist. school tax.			
.....	.....	.....	.....	.....	2880	.....	.....	.....	.....	...	Total 238.16
Court and territorial tax only by order of the district court.											

Personal ... .
Rebate or penalty.....

Total.....

G. T. BRYAN,
Treasurer, Noble County.

—— ——, *Deputy.*

35 Filed July 23, 1900.
JAY E. PICKARD, *Clerk,*
By W. S. LAMB, *Deputy.*

Noble County Taxes Levies for 1899.

Salary fund.....	6 mills	Contingent fund	1 mills
Court fund.....	3 "	County school fund	2 "
Road and bridge fund.....	2 "	Sinking fund.....	4 "
Supply fund.....	2 "		
Poor and insane fund.....	1 "	Total.....	21 mills

Territorial Purposes.

For general territorial tax.....	3 mills	For the support of the Colored Agricultural and Normal university at Langston.....	1 mill
For the erection and support of a normal school at Edmond..	5 "	For the support of a school for the blind.....	1 "
For the support of a normal school at Alva.....	5 "	Total.....	5.2 mills
For the erection and support of the university at Norman....	5 "		
For the support of the Agricultural and Mechanical college at Stillwater.....	1 "		

Township Levies.

Auburn.....	5	5	..	10	Noble.....	5	5	..	10
Antryr.....	3	7	5	15	Oak Dale.....	1	4-2	4-2	10
Black Bear.....	1	6	3	10	Red Rock.....	3	5	..	8
Bunch Creek...	5	5	..	10	Watkins.....	3	5	..	8
Glen Rose.....	5	5	..	10	White Rock.....	5	5	..	10
Lowe.....	2-2	7-2	7-2	17-2					

City Levies.

For street-bridge fund.....	2 mills	For sinking fund.....	4 mills
For fire & water supply fund.	2-2 "	For judgment fund.....	5 "
For contingent fund.....	½ "		
For street-lighting fund.....	5 "	Total	19 mills

School-district Levies.

Dist.	Mills.	Dist.	Mills.	Dist.	Mills.	Dist.	Mills.
2	20	32	20	17	20	48	20
3	20	33	5	18	20	49	15
4	20	34	20	19	5	50	15
5	12-2	35	20	20	20	51	20
6	20	37	5	21	20	52	15
7	20	38	15	22	20	53	20
8	15	39	5	23	20	54	20
9	20	40	20	24	20	55	20
10	20	41	10	25	20	56	20
11	20	42	20	26	20	57	20
12	20	43	20	27	12-2	58	20
13	15	44	20	28	15	59	20
14	20	45	20	29	20	60	20
15	20	46	20	30	15	61	20
16	20	47	8	31	20	..	..

36 *School-district Interest and Judgment Levies.*

Dist.	Sinking.	Judg.	Interest.	Dist.	Sinking.	Judg.	Interest.
3	3	. ....	.....	30	2	7½	.....
7	3	.....	.....	34	.....	20	.....
8	3	.....	.....	35	.....	3	.....
14	3	.....	... ..	37	3	.....	.....
15	3	.....	.....	38	2	.....	.....
16	.....	20	.....	39	3	.....	.....
17	.....	10	.....	42	4	.....	.....
18	3	.....	.....	43	2	.....	.....
20	3	.....	.....	44	2	.....	.....
23	2	.....	.....	45	.....	10	.....
24	2	.....	.....	49	3	.....	.....
25	4	.....	.....	50	.....	35	.....
26	15	.....	.....	51	3	.....	.....
27	2	.....	... ..	52	1	5	4
28	2	.....	.....	59	2	10	.....
29	3	.....	.....	60	3	10	. ....

37 **County treasurer's office, Noble county.**

Tax rates:
Territorial..... 5.2
County..... 21.0

Receipt No. 2888.

PERRY, OKLA., *July* 18, 1900.

Received of Witherspoon & Son the sum of $— in full for court & territorial tax of the taxes due and unpaid on the property described below, the same being the taxes due for the year 1899.

Description.	S. L.	T.	R. B.	School dist. No.	Territorial equalized value.	Consolidated territorial.	Cons. Co. twp. and municipal tax.	Dist. school tax.			
.....	.....	.....	.....	.....	24960	.....	.....	.....	.....	.....	Total 204.67
Court and territorial tax only by order of the district court.											

Personal.....
Rebate or penalty.....

Total.....

G. T. BRYAN,
Treasurer, Noble County.

—— ——, *Deputy.*

38 Filed July 23, 1900.
JAY E. PICKARD, *Clerk,*
By W. S. LAMB, *Deputy.*

Noble County Taxes Levies for 1899.

Salary fund.....	6 mills	Contingent fund.....	1 mills
Court fund.....	3 "	County school fund.....	2 "
Road and bridge fund.....	2 "	Sinking fund.....	4 "
Supply fund.....	2 "		
Poor and insane fund.....	1 "	Total.....	21 mills

Territorial Purposes.

For general territorial tax	3 mills	For the support of the Colored Agricultural and Normal university at Langston	1 mill
For the erection and support of a normal school at Edmond	5 "	For the support of a school for the blind	1 "
For the support of a normal school at Alva	5 "	Total	5.2 mill-
For the erection and support of the university at Norman	5 "		
For the support of the Agricultural and Mechanical college at Stillwater	1 "		

Township Levies.

Auburn	5	5	..	10	Noble	5	5	..	10
Antryr	3	7	5	15	Oak Dale	1	4–2	4–2	10
Black Bear	1	6	3	10	Red Rock	3	5	..	8
Bunch Creek	5	5	..	10	Watkins	3	5	..	8
Glen Rose	5	5	..	10	White Rock	5	5	..	10
Lowe	2–2	7–2	7–2	17–2					

City Levies.

For street-bridge fund	2 mills	For sinking fund	4 mills
For fire & water supply fund	2–2 "	For judgment fund	5 "
For contingent fund	½ "		
For street-lighting fund	5 "	Total	19 mills

School-district Levies.

Dist.	Mills.	Dist.	Mills.	Dist.	Mills.	Dist.	Mills.
2	20	32	20	17	20	48	20
3	20	33	5	18	20	49	15
4	20	34	20	19	5	50	15
5	12–2	35	20	20	20	51	20
6	20	37	5	21	20	52	15
7	20	38	15	22	20	53	20
8	15	39	5	23	20	54	20
9	20	40	20	24	20	55	20
10	20	41	10	25	20	56	20
11	20	42	20	26	20	57	20
12	20	43	20	27	12–2	58	20
13	15	44	20	28	15	59	20
14	20	45	20	29	20	60	20
15	20	46	20	30	15	61	20
16	20	47	8	31	20	..	..

39 *School-district Interest and Judgment Levies.*

Dist.	Sinking.	Judg.	Interest.	Dist.	Sinking.	Judg.	Interest.
3	3	.....	.....	30	2	7½	.....
7	3	.....	.....	34	.....	20	.....
8	3	.....	.....	35	.....	3	.....
14	3	.....	.....	37	3	.....	.....
15	3	.....	.....	38	2	.....	.....
16	.....	20	.....	39	3	.....	.....
17	.....	10	.....	42	4	.....	.....
18	3	.....	.....	43	2	.....	.....
20	3	.....	.....	44	2	.....	.....
23	2	.....	.....	45	.....	10	.....
24	2	.....	.....	49	3	.....	.....
25	4	.....	.....	50	.....	35	.....
26	15	.....	.....	51	3	.....	.....
27	2	.....	.....	52	1	5	4
28	2	.....	.....	59	2	10	.....
29	3	.....	.....	60	3	10	.....

40 County treasurer's office, Noble county.

Tax rates:
Territorial..... 5.2
County..... 21.0

Receipt No. 2884.

PERRY, OKLA., *July* 18, 1900.

Received of Stafford Land and Cattle Co. the sum $— in full for court & territorial tax of the taxes due and unpaid on the property described below, the same being for the taxes due for the year 1899.

Description.	S. L.	T.	R. B.	School dist. No.	Territorial equalized value.	Consolidated territorial.	Cons. Co. twp. and municipal tax.	Dist. school tax.			
.....	.....	.....	.....	.....	24000	.....	.....	.....	.....	.....	Total 196.80
Court and territorial tax only by order of district court.											

Personal.....
Rebate or penalty.....

Total.....

G. T. BRYAN,
Treasurer, Noble County.

—— ——, *Deputy.*

41 Filed July 23, 1900.
JAY E. PICKARD, *Clk*,
By W. S. LAMB, *Deputy.*

Noble County Tax Levies for 1899.

Salary fund.....	6	mills	Contingent fund.....	1	mills
Court fund.....	3	"	County school fund.....	2	"
Road and bridge fund.....	2	"	Sinking fund.....	4	"
Supply fund.....	2	"			
Poor and insane fund.....	1	"	Total.....	21	mills

Territorial Purposes.

For general territorial tax.....	3	mills	For the support of the Colored Agricultural and Normal university at Langston.....	1	mills
For the erection and support of a normal school at Edmond..	5	"	For the support of a school for the blind.....	1	"
For the support of a normal school at Alva.....	5	"			
For the erection and support of the university at Norman...	5	"	Total.....	5.2	mills
For the support of the Agricultural and Mechanical college at Stillwater.....	1	"			

Township Levies.

	Gen.	R. & B.	Judg.	Total.		Gen.	R. & B.	Judg.	Total.
Auburn.....	5	5	..	10	Noble.....	5	5	..	10
Antryr.....	3	7	5	15	Oak Dale.....	1	4-2	..	10
Black Bear....	1	6	3	10	Red Rock.....	3	5	..	8
Bunch Creek..	5	5	..	10	Watkins.....	3	5	..	8
Glen Rose.....	5	5	..	10	White Rock...	5	5	..	10
Lowe.....	2-2	7-2	7-2	17-2					

City Levies.

For street-bridge fund.....	2 mills	For sinking fund.....	4 mills
For fire & water supply fund.	2-2 "	For judgment fund.....	5 "
For contingent fund.....	½ "		
For street-lighting fund.....	5 "	Total.....	19 mills

School-district Levies.

Dist.	Mills.	Dist.	Mills.	Dist.	Mills.	Dist.	Mills.
2	20	32	20	17	20	48	20
3	20	33	5	18	20	49	15
4	20	34	20	19	5	50	15
5	12-2	35	20	20	20	51	20
6	20	37	20	21	20	52	15
7	20	38	15	22	20	53	20
8	15	39	5	23	20	54	20
9	20	40	20	24	20	55	20
10	20	41	10	25	20	56	20
11	20	42	20	26	20	57	20
12	20	43	20	27	12-2	58	20
13	15	44	20	28	15	59	20
14	20	45	20	29	20	60	20
15	20	46	20	30	15	61	20
16	20	47	8	31	20	..	..

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School-district Interest and Judgment Levies.

Dist.	Sinking.	Judg.	Interest.	Dist.	Sinking.	Judg.	Interest.
3	3	.....	.....	30	2	7½	.....
7	3	.....	.....	34	.....	20	.....
8	3	.....	.....	35	.....	3	.....
14	3	.....	.....	37	3	.....	.....
15	3	.....	.....	38	2	.....	.....
16	.....	20	.....	39	3	.....	.....
17	.....	10	.....	42	4	.....	.....
18	3	.....	.....	43	2	.....	.....
20	3	.....	.....	44	2	.....	.....
23	2	.....	.....	45	.....	10	.....
24	2	.....	.....	49	8	.....	.....
25	4	.....	.....	50	.....	35	.....
26	15	.....	.....	51	3	.....	.....
27	2	.....	.....	52	1	5	4
28	2	.....	.....	59	2	10	.....
29	3	.....	.....	60	3	10	.....

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County treasurer's office, Noble county.

Tax rates:
Territorial..... 5.2
County 21.0

Receipt No. 2885.

PERRY, OKLA., *July* 18, 1900.

Received of Stafford Land and Cattle Co. the sum $— in full for court and territorial tax of the taxes due and unpaid on the property described below, the same being for the taxes due for the year 1899.

Description.	S. L.	T.	R. B.	School dist. No.	Territorial equalized value.	Consolidated territorial.	Cons. Co. twp. and municipal tax.	Dist. school tax.			
.....	.....	.....	.....	.....	40140	.....	.....	.....	.....	.....	Total 339.14
Court and territorial tax only by order of district court.											

Personal .....
Rebate or penalty .....

Total.....

G. T. BRYAN,
Treasurer, Noble County.

—— ——, *Deputy.*

44 Filed July 23, 1900.
JAY E. PICKARD, *Clk,*
By W. S. LAMB, *Deputy.*

Noble County Tax Levies for 1899.

Salary fund	6 mills	Contingent fund	1 mills
Court fund	3 "	County school fund	2 "
Road and bridge fund	2 "	Sinking fund	4 "
Supply fund	2 "		
Poor and insane fund	1 "	Total	21 mills

Territorial Purposes.

For general territorial tax	3 mills	For the support of the Colored Agricultural and Normal university at Langston	1 mills
For the erection and support of a normal school at Edmond	5 "	For the support of a school for the blind	1 "
For the support of a normal school at Alva	5 "		
For the erection and support of the university at Norman	5 "	Total	5.2 mill-
For the support of the Agricultural and Mechanical college at Stillwater	1 "		

Township Levies.

	Gen.	R. & B.	Judg.	Total.		Gen.	R. & B.	Judg.	Total.
Auburn	5	5	..	10	Noble	5	5	..	10
Antryr	3	7	5	15	Oak Dale	1	4-2	..	10
Black Bear	1	6	3	10	Red Rock	3	5	..	8
Bunch Creek	5	5	..	10	Watkins	3	5	..	8
Glen Rose	5	5	..	10	White Rock	5	5	..	10
Lowe	2-2	7-2	7-2	17-2					

City Levies.

For street-bridge fund	2 mills	For sinking fund	4 mills
For fire & water supply fund	2-2 "	For judgment fund	5 "
For contingent fund	½ "		
For street-lighting fund	5 "	Total	19 mills

School-district Levies.

Dist.	Mills.	Dist.	Mills.	Dist.	Mills.	Dist.	Mills.
2	20	32	20	17	20	48	20
3	20	33	5	18	20	49	15
4	20	34	20	19	5	50	15
5	12-2	35	20	20	20	51	20
6	20	37	20	21	20	52	15
7	20	38	15	22	20	53	20
8	15	39	5	23	20	54	20
9	20	40	20	24	20	55	20
10	20	41	10	25	20	56	20
11	20	42	20	26	20	57	20
12	20	43	20	27	12-2	58	20
13	15	44	20	28	15	59	20
14	20	45	20	29	20	60	20
15	20	46	20	30	15	61	20
16	20	47	8	31	20	..	..

45 *School-district Interest and Judgment Levies.*

Dist.	Sinking.	Judg.	Interest.	Dist.	Sinking.	Judg.	Interest.
3	3	.....	.....	30	2	7½	.....
7	3	.....	.....	34	.....	20	.....
8	3	.....	.....	35	.....	3	.....
14	3	.....	.....	37	3	.....	.....
15	3	.....	.....	38	2	.....	.....
16	.....	20	.....	39	3	.....	.....
17	.....	10	.....	42	4	.....	.....
18	3	.....	.....	43	2	.....	.....
20	3	.....	.....	44	2	.....	.....
23	2	.....	.....	45	.....	10	.....
24	2	.....	.....	49	3	.....	.....
25	4	.....	.....	50	.....	35	.....
26	15	.....	.....	51	3	.....	.....
27	2	.....	.....	52	1	5	4
28	2	.....	.....	59	2	10	.....
29	3	.....	.....	60	3	10	.....

46 County treasurer's office, Noble county.

Tax rates:
Territorial..... 5.2
County..... 21.0

Receipt No. 2882.

PERRY, OKLA., *July* 18, 1900.

Received of I. T. Pryor, the sum $— in full for court and territorial tax of the taxes due and unpaid on the property described below, the same being for the taxes due for the year 1899.

Description.	S. L.	T.	R. B.	School dist. No.	Territorial equalized value.	Consolidated territorial.	Cons. Co. twp. and municipal tax.	Dist. school tax.			
.....	.....	.....	.....	.....	528	.....	.....	.....	.....	.....	Total 4.32
Court and territorial tax only by order of district court.											

Personal.....
Rebate or penalty.....

Total.....

G. T. BRYAN,
Treasurer, Noble County.

——— ———, *Deputy.*

47 Filed July 23, 1900.
JAY E. PICKARD, *Clk,*
By W. S. LAMB, *Deputy.*

Noble County Tax Levies for 1899.

Salary fund.....	6 mills	Contingent fund.....	1 mills
Court fund.....	3 "	County school fund.....	2 "
Road and bridge fund.....	2 "	Sinking fund.....	4 "
Supply fund.....	2 "		
Poor and insane fund.....	1 "	Total.....	21 mills

Territorial Purposes.

For general territorial tax	3 mills	For the support of the Colored Agricultural and Normal university at Langston	1 mills
For the erection and support of a normal school at Edmond	5 "	For the support of a school for the blind	1 "
For the support of a normal school at Alva	5 "	Total	5.2 mills
For the erection and support of the university at Norman.	5 "		
For the support of the Agricultural and Mechanical college at Stillwater	1 "		

Township Levies.

	Gen.	R. & B.	Judg.	Total.		Gen.	R. & B.	Judg.	Total.
Auburn	5	5	..	10	Noble	5	5	..	10
Antryr	3	7	5	15	Oak Dale	1	4–2	..	10
Black Bear	1	6	3	10	Red Rock	3	5	..	8
Bunch Creek	5	5	..	10	Watkins	3	5	..	8
Glen Rose	5	5	..	10	White Rock	5	5	..	10
Lowe	2-2	7-2	7-2	17-2					

City Levies.

For street-bridge fund	2 mills	For sinking fund	4 mills
For fire & water supply fund	2-2 "	For judgment fund	5 "
For contingent fund	½ "	Total	19 mills
For street-lighting fund	5 "		

School District Levies.

Dist.	Mills.	Dist.	Mills.	Dist.	Mills.	Dist.	Mills.
2	20	32	20	17	20	48	20
3	20	33	5	18	20	49	15
4	20	34	20	19	5	50	15
5	12-2	35	20	20	20	51	20
6	20	37	5	21	20	52	15
7	20	38	15	22	20	53	20
8	15	39	5	23	20	54	20
9	20	40	20	24	20	55	20
10	20	41	10	25	20	56	20
11	20	42	20	26	20	57	20
12	20	43	20	27	12-2	58	20
13	15	44	20	28	15	59	20
14	20	45	20	29	20	60	20
15	20	46	20	30	15	61	20
16	20	47	8	31	20	..	..

48 *School-district Interest and Judgment Levies.*

Dist.	Sinking.	Judg.	Interest.	Dist.	Sinking.	Judg.	Interest.
3	3	.....	.....	30	2	7½	.....
7	3	.....	.....	34	.....	20	.....
8	3	.....	.....	35	.....	3	.....
14	3	.....	.....	37	3	.....	.....
15	3	.....	.....	38	2	.....	.....
16	.....	20	.....	39	3	.....	.....
17	.....	10	.....	42	4	.....	.....
18	3	.....	.....	43	2	.....	.....
20	3	.....	.....	44	2	.....	.....
23	2	.....	.....	45	.....	10	.....
24	2	.....	.....	49	3	.....	.....
25	4	.....	.....	50	.....	35	.....
26	15	.....	.....	51	3	.....	.....
27	2	.....	.....	52	1	5	4
28	2	.....	.....	59	2	10	.....
29	3	.....	.....	60	3	10	.....

49 County treasurer's office, Noble county.

Tax rates:
Territorial..... 5.2
County..... 21.0

Receipt No. 2890.

PERRY, OKLA., *July* 18, 1900.

Received of John F. Witherspoon the sum of $— in full for court and territorial tax of the taxes due and unpaid on the property described below, the same being for the taxes due for the year 1899.

Description.	S. L.	T.	R. B.	School dist. No.	Territorial equalized value.	Consolidated territorial.	Cons. Co. twp. and municipal tax.	Dist. school tax.			
.....	.....	.....	.....	.....	16128	.....	.....	.....	.....	.....	Total 132.24
Court and territorial tax only by order of district court.											

Personal.....
Rebate or penalty.....

Total.....

G. T. BRYAN,
Treasurer, Noble County.

—— ——, *Deputy.*

50 Filed July 23, 1900.
JAY E. PICKARD, *Clerk,*
By W. S. LAMB, *Deputy.*

Noble County Taxes Levies for 1899.

Salary fund.....	6 mills	Contingent fund.....	1 mills
Court fund.....	3 "	County school fund.....	2 "
Road and bridge fund.....	2 "	Sinking fund.....	4 "
Supply fund.....	2 "		
Poor and insane fund.....	1 "	Total.....	21 mills

Territorial Purposes.

For general territorial tax....	3 mills	For the support of the Colored Agricultural and Normal university at Langston.....	1 mills
For the erection and support of a normal school at Edmond.	5 "	For the support of a school for the blind.....	1 "
For the support of a normal school at Alva	5 "	Total.....	5.2 mills
For the erection and support of the university at Norman...	5 "		
For the support of the Agricultural and Mechanical college at Stillwater.....	1 "		

Township Levies.

Auburn.....	5	5	..	10	Noble	5	5	..	10
Antryr.....	3	7	5	15	Oak Dale.....	1	4-2	4-2	10
Black Bear.....	1	6	3	10	Red Rock.....	3	5	..	8
Bunch Creek.....	5	5	..	10	Watkins.....	3	5	..	8
Glen Rose.....	5	5	..	10	White Rock.....	5	5	..	10
Lowe.....	2-2	7-2	7-2	17-2					

City Levies.

For street-bridge fund	2 mills	For sinking fund..... ...	4 mills
For fire & water supply fund..	2-2 "	For judgment fund	5 "
For contingent fund....	½ "		
For street-lighting fund.....	5 "	Total	19 mills

School-district Levies.

Dist.	Mills.	Dist.	Mills.	Dist.	Mills.	Dist.	Mills.
2	20	32	20	17	20	48	20
3	20	33	5	18	20	49	15
4	20	34	20	19	5	50	15
5	12-2	35	20	20	20	51	20
6	20	37	5	21	20	52	15
7	20	38	15	22	20	53	20
8	15	39	5	23	20	54	20
9	20	40	20	24	20	55	20
10	20	41	10	25	20	56	20
11	20	42	20	26	20	57	20
12	20	43	20	27	12-2	58	20
13	15	44	20	28	15	59	20
14	20	45	20	29	20	60	20
15	20	46	20	30	15	61	20
16	20	47	8	31	20	..	..

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School-district Interest and Judgment Levies.

Dist.	Sinking.	Judg.	Interest.	Dist.	Sinking.	Judg.	Interest.
3	3	.....	.....	30	2	7½	.....
7	3	.....	.....	34	.....	20	.....
8	3	.....	.....	35	.....	3	.....
14	3	.....	.....	37	3	.....	.....
15	3	.....	.....	38	2	.....	
16	.....	20	.....	39	3	.....	.....
17	.....	10	.....	42	4	.....	.....
18	3	.....	.....	43	2	.....	.....
20	3	.....	.....	44	2	.....	.....
23	2	.....	.....	45	.....	10	.....
24	2	.....	.....	49	3	.....	.....
25	4	.....	.....	50	.....	35	.....
26	15	.....	.....	51	3	.....	.....
27	2	.....	.....	52	1	5	4
28	2	.....	.....	59	2	10	.....
29	3	.....	.....	60	3	10	.....

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Tax rates:
Territorial..... 5.2
County..... 21.0

County treasurer's office, Noble county.

Receipt No. 2881.

PERRY, OKLA., *July* 18, 1900.

Received of I. T. Pryor & Co. the sum $— in full for court and territorial tax of the taxes due and unpaid on the property described below, the same being for the taxes due for the year 1899.

Description.	S. L.	T.	R. B.	School dist. No.	Territorial equalized value.	Consolidated territorial.	Cons. Co. twp. and municipal tax.	Dist. school tax.			
.....	.....	.....	.....	.....	24266	.....	.....	.....	.....	.....	Total 198.98
Court and territorial tax only by order of district court.											

Personal.....
Rebate or penalty.....

Total.....

G. T. BRYAN,
Treasurer, Noble County.

—— ——, *Deputy.*

53 Filed July 23, 1900.
JAY E. PICKARD, *Cl'k,*
By W. S. LAMB, *Deputy.*

Noble County Tax Levies for 1899.

Salary fund	6 mills	Contingent fund	1 mills
Court fund	3 "	County school fund	2 "
Road and bridge fund	2 "	Sinking fund	4 "
Supply fund	2 "		
Poor and insane fund	1 "	Total	21 mills

Territorial Purposes.

For general territorial tax	3 mills	For the support of the Colored Agricultural and Normal university at Langston	1 mills
For the erection and support of a normal school at Edmond	5 "	For the support of a school for the blind	1 "
For the support of a normal school at Alva	5 "		
For the erection and support of the university at Norman	5 "	Total	5.2 mills
For the support of the Agricultural and Mechanical college at Stillwater	1 "		

Township Levies.

	Gen.	R. & B.	Judg.	Total.		Gen.	R. & B.	Judg.	Total.
Auburn	5	5	..	10	Noble	5	5	..	10
Antryr	3	7	5	15	Oak Dale	1	4–2	..	10
Black Bear	1	6	3	10	Red Rock	3	5	..	8
Bunch Creek	5	5	..	10	Watkins	3	5	..	8
Glen Rose	5	5	..	10	White Rock	5	5	..	10
Lowe	2–2	7–2	7–2	17–2					

City Levies.

For street-bridge fund	2 mills	For sinking fund	4 mills
For fire & water supply fund	2–2 "	For judgment fund	5 "
For contingent fund	½ "		
For street-lighting fund	5 "	Total	19 mills

School-district Levies.

Dist.	Mills.	Dist.	Mills.	Dist.	Mills.	Dist.	Mills.
2	20	32	20	17	20	48	20
3	20	33	5	18	20	49	15
4	20	34	20	19	5	50	15
5	12–2	35	20	20	20	51	20
6	20	37	5	21	20	52	15
7	20	38	15	22	20	53	20
8	15	39	5	23	20	54	20
9	20	40	20	24	20	55	20
10	20	41	10	25	20	56	20
11	20	42	20	26	20	57	20
12	20	43	20	27	12–2	58	20
13	15	44	20	28	15	59	20
14	20	45	20	29	20	60	20
15	20	46	20	30	15	61	20
16	20	47	8	31	20	..	..

54 *School-district Interest and Judgment Levies.*

Dist.	Sinking.	Judg.	Interest.	Dist.	Sinking.	Judg.	Interest.
3	3	.....	.....	30	2	7½	.....
7	3	.....	.....	34	.....	20	.....
8	3	.....	.....	35	.....	3	.....
14	3	.....	.....	37	3	.....	.....
15	3	.....	.....	38	2	.....	.....
16	.....	20	.....	39	3	.....	.....
17	.....	10	.....	42	4	.....	.....
18	3	.....	.....	43	2	.....	.....
20	3	.....	.....	44	2	.....	.....
23	2	.....	.....	45	.....	10	.....
24	2	.....	.....	49	3	.....	.....
25	4	.....	.....	50	.....	35	.....
26	15	.....	.....	51	3	.....	.....
27	2	.....	.....	52	1	5	4
28	2	.....	.....	59	2	10	.....
29	3	.....	.....	60	2	10	.....

55 County treasurer's office, Noble county.

Tax rates:
Territorial..... 5.2
County..... 21.0

Receipt No. 2892.

PERRY, OKLA., *July* 18, 1900.

Received of 101 Live Stock Co. the sum $— in full for court and territorial tax of the taxes due and unpaid on the property described below, the same being for the taxes due for the year 1899.

Description.	S. L.	T.	R. B.	School dist. No.	Territorial equalized value.	Consolidated territorial.	Cons., Co. twp. and municipal tax.	Dist. school tax.			
.....	.....	.....	.....	.....	71535	.....	.....	.....	.....	.....	Total 94.58
Court & territorial tax only by order of district court.											

Personal.....
Rebate or penalty.....

Total.....

G. T. BRYAN,
Treasurer, Noble County.

——, *Deputy.*

56 Filed July 23, 1900.
JAY E. PICKARD, *Cl'k,*
By W. S. LAMB, *Deputy.*

Noble County Tax Levies for 1899.

Salary fund.....	6 mills	Contingent fund.....	1 mills
Court fund.....	3 "	County school fund.....	2 "
Road and bridge fund.....	2 "	Sinking fund.....	4 "
Supply fund.....	2 "		
Poor and insane fund.....	1 "	Total.....	21 mills

Territorial Purposes.

For general territorial tax.....	3 mills	For the support of the Colored Agricultural and Normal university at Langston.....	1 mills
For the erection and support of a normal school at Edmond..	5 "	For the support of a school for the blind..	1 "
For the support of a normal school at Alva	5 "	Total.....	5.2 mills
For the erection and support of the university at Norman ...	5 "		
For the support of the Agricultural and Mechanical college at Stillwater.....	1 "		

Township Levies.

	Gen.	R. & B.	Judg.	Total.		Gen.	R. & B.	Judg.	Total.
Auburn	5	5	..	10	Noble.....	5	5	..	10
Antryr.....	3	7	5	15	Oak Dale.....	1	4-2	..	10
Black Bear	1	6	3	10	Red Rock.	3	5	..	8
Bunch Creek ..	5	5	..	10	Watkins	3	5	..	8
Glen Rose.	5	5	..	10	White Rock ...	5	5	..	10
Lowe...	2-2	7-2	7-2	17-2					

City Levies.

For street-bridge fund.....	2 mills	For sinking fund	4 mills
For fire & water supply fund.	2-2 "	For judgment fund	5 "
For contingent fund.	½ "	Total	19 mills
For street-lighting fund.. ...	5 "		

School-district Levies.

Dist.	Mills.	Dist.	Mills.	Dist.	Mills.	Dist.	Mills.
2	20	32	20	17	20	48	20
3	20	33	5	18	20	49	15
4	20	34	20	19	5	50	15
5	12-2	35	20	20	20	51	20
6	20	37	5	21	20	52	15
7	20	38	15	22	20	53	20
8	15	39	5	23	20	54	20
9	20	40	20	24	20	55	20
10	20	41	10	25	20	56	20
11	20	42	20	26	20	57	20
12	20	43	20	27	12-2	58	20
13	15	44	20	28	15	59	20
14	20	45	20	29	20	60	20
15	20	46	20	30	15	61	20
16	20	47	8	31	20	..	..

57 *School-district Interest and Judgment Levies.*

Dist.	Sinking.	Judg.	Interest.	Dist.	Sinking.	Judg.	Interest.
3	3	.....	.....	30	2	7½	.....
7	3	.....	.....	34	.....	20	.....
8	3	.....	.....	35	.....	3	.....
14	3	.....	.....	37	3	.....	.....
15	3	.....	.....	38	2	.....	.....
16	.....	20	.....	39	3	.....	.....
17	... ..	10	.....	42	4	.....	.....
18	3	.....	.....	43	2	.....	.....
20	3	.....	.....	44	2	.....	.....
23	2	.....	.....	45	.....	10	.....
24	2	.....	.. ..	49	3	.....	.....
25	4	.....	.....	50	.....	35	.....
26	15	.. ...	.....	51	3	.....	.. ...
27	2	.....	.....	52	1	5	4
28	2	....	.. ...	59	2	10	.....
29	3	.. ...	.. ...	60	3	10	.....

58 That thereafter and on the — day of July, A. D. 1900, the said plaintiffs filed their undertaking in injunction in said cause, in compliance with the order before set out, and said injunction thereupon became effectual and said injunction bond has ever since remained in full force and effect.

That thereafter, and on the 8th day of September, A. D. 1900, the defendants filed in said cause their demurrer to said petition of plaintiffs as amended as aforesaid; which demurrer is in the words and figures as follows, to wit:

In the District Court of Noble County and Territory of Oklahoma.

I. T. PRYOR & Co., Copartnership, *et al.*, Plaintiffs,
vs.
GEORGE A. FOSTER, Sheriff, *et al.*, Defendants. } Demurrer.

Come now the defendants herein and each of them, by the county attorney of said county, and demurs to the cause of action set out in plaintiff's petition, for the following reasons, to wit:

First. Because the court has no jurisdiction of the subject-matter of the action.

Second. Because the plaintiffs and neither of them, have legal capacity to sue.

Third. Because there is another action pending between the same parties for the same cause.

Fourth. Because there is a defect of parties plaintiff.

Fifth. Because there is a defect of parties defendant.

Sixth. Because several causes of action are improperly joined.

Seventh. Because the petition does not state facts sufficient to constitute a cause of action.

A. R. MUSELLER,
County Attorney of Noble County, Oklahoma Territory.

Endorsed on back as follows: No. 1220. Pryor *et al.*, *vs.* Foster, *et al.*, Demurrer. Filed Sept. 8th, 1900. Jay E. Pickard, cl'k, by W. S. Lamb, deputy.

59 That upon the said 8th day of September, A. D. 1900, the said cause came on for hearing in the above-entitled court at a regular adjourned day thereof, both parties appearing by counsel, and after argument of said demurrer and submitting briefs in connection therewith, said cause was taken under advisement.

That afterwards and on the 27th day of October A. D. 1900, at a regular adjourned day of the said district court, said cause came on for decision upon said demurrer, the parties appearing as before stated, and said demurrer was by the court sustained as appears from the journal entry and judgment of the court, and further proceedings were had in connection therewith as shown by said journal entry including the dissolution of the injunction before referred to; which said journal entry and judgment is in the words and figures as follows, to wit:

60 In the District Court of Noble County, Oklahoma Territory.

I. T. PRYOR ET AL., Plaintiffs,
vs.
GEORGE A. FOSTER, Sheriff, *et al.*, Defendants. } No. 1220. Journal Entry.

And now on this 8th day of September, A. D. 1900, this cause comes on for hearing upon the petition of plaintiffs and the demurrer of the defendants, the plaintiffs appearing by James B. Diggs and Russell G. Lowe, their attorneys, and the defendants appearing by A. R. Museller, county attorney of said county.

Whereupon oral arguments and written briefs are submitted by the attorneys for the respective parties and the said cause taken under advisement by the court. The defendants having waived any question with reference to the joinder of parties and causes, cause is taken under advisement and consideration upon the question as to the allegations of the petition being sufficient to constitute a cause of action.

PRYOR ET AL.
vs.
FOSTER ET AL. } No. 1220.

And now upon this 27th day of October, A. D. 1900, this cause comes further on for hearing and determination, the plaintiffs appearing by S. H. Harris and R. G. Lowe, their attorneys, and the defendants appearing by A. R. Museller, county attorney of said county, and Horace Speed, their attorneys; and, after considering the arguments and briefs of counsel for the respective parties and being advised in the premises, the court sustained the demurrer of the defendants upon the ground that the petition of plaintiff-
61 does not state facts sufficient to constitute a cause of action, to which ruling of the court the plaintiffs duly except.

Whereupon plaintiffs decline to further plead and elect to stand upon their petition, and the court being advised in the premises it is ordered, adjudged and decreed that the temporary injunction issued herein be dissolved and that the action be dismissed and that defendants recover of said plaintiffs their costs herein expended, taxed at $— to all of which the said plaintiffs duly except, and at plaintiffs' request they are given twelve days in which to prepare and serve case-made for the supreme court and defendant- given three days to suggest amendments thereto, said case-made to be signed and settled upon three days' notice in writing by either party and upon the filing of the petition in error of the plaintiffs in the supreme court on or before the 24th day of November, A. D. 1900, execution of this judgment and each and every part thereof shall be and is hereby stayed, pending the determination of said cause, and execution of this judgment is hereby stayed until the said 24th day of November, A. D. 1900.

BAYARD T. HAINER, *Judge.*

O K:
S. H. HARRIS,
Attorneys for Plaintiffs.

Endorsed: Pryor, *et al.*, *vs.* County—Journal. Filed Nov. 24, 1900. Benj. F. Hegler, clerk supreme court. By Jessie Pardoe, deputy.

62 TERRITORY OF OKLAHOMA, } ss:
County of Noble, }

I, S. H. Harris, attorney for plaintiffs in the above-entitled cause, hereby certify that the above and foregoing case-made contains a true and correct statement and copy of all the pleadings, orders, and proceedings of every kind and nature, had, given or rendered in the above-entitled cause.

Witness my hand this 8th day of November A. D. 1900.

S. H. HARRIS,
Attorney for Plaintiffs.

W. L. BARNUM AND
JAS. B. DIGGS,
Att'ys for Pl'ff-.

63 TERRITORY OF OKLAHOMA, } ss:
County of Noble, }

I hereby accept service of the foregoing case-made upon behalf of the defendants, this 8th day of November A. D. 1900.

A. R. MUSELLER,
Attorney for Defendants.

Filed Nov. 24, 1900.

BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

TERRITORY OF OKLAHOMA, } ss:
County of Noble, }

After examination of the foregoing case-made, I admit that the same contains a full, true and correct copy and statement of all the pleadings, proceedings and judgments had, given or rendered in the above-entiled cause, and waive the suggestion of amendments thereto and notice of time and place for settlement, and consent that the same may be settled signed and certified any time or place, within the time limited by the order of the court.

Witness my hand, this 16th day of November A. D. 1900.

A. R. MUSELLER,
Attorney for Defendants.

Filed Nov. 24, 1900.

BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

64 In the District Court of Noble County, Oklahoma Territory.

I. T. PRYOR ET AL., Plaintiffs,
vs.
GEO. A. FOSTER ET AL., Defendants. } Certificate.

This is to certify that the foregoing case-made has been duly served in due time, and that suggestion of amendments and notice of time and place of settlement have been duly waived and that the same has been presented to me for settlement and signing as required by law, by all the parties to this action.

That the same as above set forth and as corrected by me is true, complete and correct, and contains a true and correct statement of all the pleadings, motions, orders, findings and proceedings of every kind and nature, had, given or rendered is said cause, and I hereby settle, allow and sign the same as true and correct, and hereby order the clerk of this court to attest the same with the name and seal of said court, and to file the same of record as required by law.

Witness my hand, this 19th day of November A. D. 1900.

BAYARD T. HAINER, *Judge.*

Attest: JAY E. PICKARD,
Clerk of District Court in and for Noble County, Oklahoma Territory,
By W. S. LAMB,
Deputy Clerk.

[SEAL.]

Filed Nov. 24, 1900.

BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

65 In the District Court of Noble County, Oklahoma Territory.

I. T. PRYOR ET AL., Plaintiffs,
vs.
GEO. A. FOSTER ET AL., Defendants. } Affidavit.

TERRITORY OF OKLAHOMA, } ss:
County of Noble,

S. H. Harris, being first duly sworn says: That he is one of the attorneys for the plaintiffs in the above-entitled action;

That the true and lawful costs and expenses of preparing the foregoing case-made amount to $38.00, which sum has been paid by plaintiffs.

S. H. HARRIS,
Attorney for Plaintiffs.

Subscribed and sworn to before me this 16th day of November A. D. 1900.

A. A. STEPHENS,
Notary Public.

My commission expires Jan. 4, 1904.
[SEAL.]

Filed Nov. 19, 1900.

JAY E. PICKARD, *Clerk*,
By W. S. LAMB, *Deputy*.

Filed Nov. 24, 1900.

BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy*.

66 And at the January term, 1901, on the 2nd day of January, 1901, the following proceeding was had in this cause, to wit:

I. T. PRYOR ET AL., Plaintiffs in Error,
vs.
GEORGE A. FOSTER, Sheriff, *et al.*, Defendants in Error. } #1042.

Ordered by the court: That this cause now be submitted on briefs with leave to file briefs in three days.

And leave is given Attorney Hornor, of counsel for plaintiffs in error, to correct their briefs.

67 And afterward to wit: at the June, 1901, term of said court on the 6th day of July, 1901, the following further proceeding was had in this cause, to wit:

I. T. PRYOR ET AL., Plaintiffs in Error,
vs.
G. T. BRYAN, County Treasurer, *et al.*, Defendants in Error. } #1042.

And now this cause comes on for final decision by the court upon the record and briefs submitted therein.

And the court having duly considered the same, and being fully advised in the premises, finds that the judgment of the trial court in this cause should be reversed, and cause remanded to lower court, with directions to enter judgment perpetually enjoining the collection of the taxes in controversy herein, except the taxes for territorial and court funds, upon payment by the respective appellants, of the whole amount of said taxes and penalties, if any, accrued prior to the bringing of the suits herein, into court, or the payment of such taxes to the treasurer of Noble county, such payment to be evidenced to the court by the treasurer's receipts therefor. The cost of this case to be taxed to the county of Noble.

It is therefore ordered and adjudged by the court, that the judgment of the trial court in this cause be and the same is hereby reversed; and that said cause be remanded to the lower court with instructions to enter judgment perpetually enjoining the collection of the taxes in controversy herein, except the taxes for territorial and court funds, upon payment by the respective appellants of the whole amount of said taxes and penalties, if any, accrued prior to the bringing of the suits herein, into court, or the payment of such taxes to the treasurer of Noble county, such payment to be evidenced

to the court by the treasurer's receipts therefor. The costs of this case to be taxed to the county of Noble. Opinion by Burwell, J., all the justices concurring, except Hainer, J., who presided in the trial below, not sitting.

68 And on the same day, to wit: July 6, 1901, said supreme court handed down and there was filed their said decision in said cause, which said decision reads in words and figures, as follows, to wit:

69 Nos. 1042 and 1046.

In the Supreme Court of the Territory of Oklahoma, June Term, 1901.

Filed July 6, 1901.

I. T. PRYOR ET AL., Plaintiff- in Error,
vs.
G. T. BRYAN, County Treasurer, *et al.*, Defendants in Error. } No. 1042.

ATCHISON, TOPEKA & SANTA FE R. R. Co., Plaintiff in Error,
vs.
G. T. BRYAN, County Treasurer, *et al.*, Defendants in Error. } No. 1046.

Syllabus.

Taxation on Indian reservation—County assessor proper officer to assess property on same—Exemptions, allowed, when—Power of legislature to exempt from taxation.

1. An Indian reservation which is by an act of the territorial legislature, attached to an organized county for taxing purposes, becomes a part of the taxing district of such organized county.
2. An Indian reservation attached to an organized county for taxing purposes, being a part of the county taxing district to which it is attached, the county assessor of such organized county is the proper officer to assess the property of such reservation, for taxation.
3. The taxing power of a State or Territory is a legislative power and the legislature may exempt from taxation, in whole, or for all except specified levies on any class of property, unless prohibited by constitutional provisions, so long as it affords to all property equal protection of the laws, and makes no unequal or unfair discrimination in taxing different kinds or classes of property; but all property of the same kind and in the same condition, used for the same purposes and afforded equal protection of the law, must be subjected to the same taxation.

4. An act of the territorial legislature, which exempts from taxation all property on an Indian reservation attached to an organized county for taxing purposes, except for territorial and court funds, where the property on such reservation receives no benefit, or at most, a very small benefit from such other tax funds of the organized county, is not void for conflict with the Constitution of the United States, or with section 6 of the organic act of the Territory of Oklahoma; and the legislature is the sole judge of the propriety or wisdom of exempting such property from taxation for such other funds.

Error from the district court of Noble county. Bayard T. Hainer, trial judge. Reversed and remanded.

S. H. Harris, James B. Diggs and William L. Barnum, attorneys for I. T. Pryor, *et al.*

Henry E. Asp, J. R. Cottingham, C. O. Blake and John W. Shatel, attorneys for the A. T. & S. F. R. R. Co.

Horace Speed and A. R. Museller, attorneys for defendant in error.

Opinion of the court by BURWELL, *J.*:

Case No. 1042 is an action commenced by I. T. Pryor and others against G. T. Bryan, county treasurer of Noble county, and others to enjoin the collection of certain taxes levied against the property of the plaintiffs for the year 1899, which property during that year was located on the Ponca and Otoe Indian reservations. Case No. 1046, The Atchison, Topeka & Santa Fe Railroad Company *vs.* G. T. Bryan, county treasurer and others, is for the same purpose; and as the law questions are the same in each case we will consider them together.

By article 6 of chapter 43 of the Session Laws of 1895, it is provided:—

"That section 13, article 2, chapter 70 of the Oklahoma Statutes relating to revenue, be and the same is hereby amended so as to read as follows: Section 13. That when any cattle are kept or grazed, or any other personal property is situated in any unorganized country, district or reservation of this Territory, then such property shall be subject to taxation in the organized county to which said country, district or reservation is attached for judicial purposes, and the board of county commissioners of the organized county or
70 counties to which such unorganized country, district or reservation is attached, shall appoint a special assessor each year, whose duty it shall be to assess such property thus situated or kept; such special assessor shall have all the powers and be required to perform all the duties of a township assessor, and shall give a similar bond and take the same oath as required of such township assessor, and receive the same fees as a township assessor, and the officer whose duty it shall be to collect the taxes in the organized county to which such country, district or reservation is attached shall collect the taxes and is vested with all the powers which he

may exercise in the organized county, and his official bond shall cover such taxes, etc."

The right to tax property in these reservations, when located within the boundary lines of the territory, is no longer an open question:—Gay *vs.* Thomas, 169 U. S., 264. But in 1899 the territorial legislature enacted the following statute, which will be found on page 216 of the Session Laws of 1899:—

"That from and after the passage and approval of this act, no taxes shall be assessed, levied or collected in any unorganized country, district or reservation which shall be or which may hereafter be attached to any county for judicial purposes, except taxes for the territorial and court funds. All acts and parts of acts in conflict herewith are hereby repealed."

The question now presented is, Has the territorial legislature the power to tax the property in these reservations for territorial and court funds and not for other county purposes? The plaintiffs in error insist that the Ponca and Otoe Indian reservations although attached to Noble county for taxing purposes, form a separate taxing district, and therefore the rule of uniformity throughout the taxing district does not apply. Without determining at this time as to whether under our organic law the legislature must adopt a uniform rule for taxing all property within the taxing district, we will consider briefly the effect of attaching these reservations to Noble county for taxing purposes. When the law of 1895 was first enacted we were under the system of township assessors; therefore the legislature provided that the county commissioners of the county to which any Indian reservation was attached for taxing purposes should appoint a special assessor each year, whose duty it should be to assess the property in such reservation, and that such special assessor should have all of the powers and should be required to perform all of the duties of a township assessor, and that he should give a similar bond and take the same oath as required of such township assessors, and receive the same fees. And by this same section it was provided that the officer whose duty it was to collect the taxes in the organized county to which such country, district or reservation was so attached, should collect such taxes, and was vested with all the powers which he might exercise in the organized county, and his official bond by the act was made to cover all such taxes which might come into his possession. From the provisions of the act of 1895, it will be seen that the legislature treated these reservations as it did the townships in the same county, and they were under the same rule; and while they were not, in fact, a part of Noble county, that is, the county lines were not extended around them, still they were attached to Noble county, and became a part of the same taxing district; and the legislature provided for the appointment of a special assessor each year for these reservations so that they might, as nearly as possible, be placed under the same system as the townships; and when the legislature in 1897, did away with township assessors, and provided one assessor for each county, the act repealed the other statute regarding special assessors for these reservations, and the county assessors in the counties to which

the different reservations were attached for taxing purposes were thereby empowered to assess all of the property in their respective counties, and this power was not necessarily limited to the territory within the county lines, for the law which directs the county assessor to assess the property in his county, means also that he shall assess the property in the Indian reservation attached to his county for taxing purposes; and while such reservations may, in fact, be clear outside of the lines of the county, it is by law placed under the same jurisdiction, and subject to the same rules. Once a reservation is attached to a county for taxing purposes, it thereby becomes a part of the county taxing district to which it is attached.—Gay *vs.* Thomas, 169 U. S., 277, and Russell *vs.* Green, (Okla.) not officially reported, 62 Pac., 817. It therefore necessarily follows that, if the law in question is to be upheld, it must be upon some theory other than that the Ponca and Otoe Indian reservations form a separate taxing district.

This brings us to the consideration of the power of the legislature to exempt the property in these reservations from certain taxes which are imposed upon the property within the limits of the organized county to which they are attached for taxing purposes.

71 The power of taxation is a legislative power, and the right to select certain classes or species of property for taxation, and the right to exempt from taxation other classes of property is unrestricted except by constitutional inhibitions. Therefore, while many cases have been cited on behalf of both appellants and appellee- in these cases, the great majority of them are of little assistance to us as they are interpretations of constitutions which very materially differ from our organic act. We will, however, notice a few of these authorities before commenting upon the limitations placed upon our territorial legislature regarding taxation; but before doing this we will here suggest that, unless prohibited by organic law, the legislative branch of the State has the absolute power to say what property shall be taxed, for what purposes it shall be taxed, and what persons or property shall be exempted from taxation; provided however, that it affords all persons and property equal protection of the laws; and the legislative branch of the Government is the sole judge of the wisdom of such matters.—McCullough *vs.* Maryland, 4 Wheat., 415; Bank *vs.* Billings, 4 Peters, 514; State *vs.* Lancaster County, 4 Neb., 540; and in Cooley on Taxation, page 144, it is said:—

"It remains to see what is the rule regarding exemptions where none is prescribed by the State constitution. The exemptions commonly made by express statute are based upon reasons so forcible that they have seldom been contested. We refer now to the exemptions of tools of trade; of the limited personal property of very poor persons; the property of corporations or associations, devoted exclusively to the work of public charity, or in other directions where what they accomplish operates in the relief of public burdens and the like. Exemptions of the property of religious societies, and of persons or corporations engaged in instruction, have not passed unchallenged on the score of right and policy; but the power to make

them is unquestioned. And upon the general subject of exemptions, the following rules are deduced from the authorities:

1. The general right to make exemptions is involved in the right to apportion taxes, and must be understood to exist wherever it is not forbidden. The right is supposed to be exercised on reasons of State policy, and presumptively such exemptions contribute to the general public benefit.

2. Exemptions thus granted on considerations of public policy, may be recalled when the legislative view of public policy shall have changed. To the individuals, corporations or associations benefited by them, they are to be regarded as favors or privileges merely, to continue during the pleasure of the sovereignty, and there can be no breach of faith—certainly no want of power—in terminating them at any time."

The first case we will notice is that of Township of Pine Grove *vs.* Talcott, 19 Wall. (U. S.) 666. In this case Mr. Justice Swayne, speaking for the court, said:—

"The eleventh clause of the same article (speaking of sec. 11, of art. 14 of the constitution of the State of Michigan) declares that the legislature shall provide a uniform rule of taxation, except as to property paying specific taxes, and that taxes shall be levied upon such property as shall be prescribed by law. The object of this provision was to prevent unjust discriminations. It prevents property from being classified and taxed as classed by different rules. All kinds of property must be taxed uniformly, or be entirely exempt. The uniformity must be coextensive with the territory to which the tax applies. If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout such county or city."

It will be seen that by the express terms of the constitution of the State of Michigan, uniformity was required.

The next case is Hutchinson *vs.* Ozark Land Company, 38 Am. State Rep., 258. Here the legislature of Arkansas divided a county into two judicial districts, and levied a different rate on the assessed valuation of each district; and the court said:—

"It is not within the power of the legislature to divide the county into taxing districts, and thereby to authorize the levy of a greater tax in one part of the county than in another, for a purpose which is not local, but is purely a county purpose, if there is a provision in the State constitution exacting uniformity of taxation."

This decision, like the one just above cited, is based upon a constitutional provision requiring uniformity of taxation.

72 In Tennessee the legislature created a levee district, and provided in the act that all of the lands in the district should be taxed for levee purposes, except certain designated lands which were exempted from such tax. The State constitution provided:—

"All property, real, personal or mixed, shall be taxed, but the legislature may except such as may be held by the State, by counties, cities or towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, and shall except

one thousand dollars' worth of personal property in the hands of each tax-payer, and the direct product of the soil in the hands of the producer or his immediate vendee. All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that the taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value."

"The General Assembly shall have power to authorize the several counties and incorporated towns in this State, to impose taxes for county and corporation purposes respectively, in such manner as shall be prescribed by law; and all property shall be taxed according to its value, upon the principles established in regard to State taxation."

In commenting upon these sections of the constitution the court, in the case of Reelfoot Lake, Levee District, *vs.* Dawson, 36 S. W. Rep., 1043, said:—

"The language of both sections is plain and positive. Its meaning cannot be mistaken, nor its force evaded. Both sections are mandatory in at least two points that are urged against the present act. Section 28 (the 1st paragraph quoted) imperatively requires, (1) that all property, of whatever kind, except that mentioned for conditional and unconditional exemption, shall be taxed; and (2) that all such taxable property shall be taxed according to its value. Section 29 (the 2nd paragraph quoted), though not repeating the first sentence of section 28, makes the same imperative requirements; so that whether a given tax law fall under the one section or the other, or under both of them, those requirements are equally applicable and mandatory. In every instance the requirement that all property (except that mentioned for exemptions) shall be taxed, prohibits the legislature from making additional exemptions. Railway Company *vs.* Wilson Company, 89 Tenn., 608, 15 S. W., 446; City of Memphis *vs.* Memphis City Bank, 91 Tenn., 588, 19 S. W., 1045. And likewise the requirement that all such property shall be taxed according to its value prohibits the legislature from laying a tax on any property in specie or by the acre. Under the constitution of 1796 the lands were taxed by the hundred acres, but the constitution of 1834, like that of 1870, contained the provision that: 'All property shall be taxed according to its value.' This means that every property taxed shall be graduated by the value of the property on which it is laid.—Jenkins *vs.* Ewin, 8 Heisk, 478; Chattanooga *vs.* Nashville C. & St. R. Co., 7 Lea., 561; Railroad Company *vs.* Morow, 87 Tenn., 406, 11 S. W., 348."

The question of uniformity of taxation again arose in June of 1898, in the case of Jones *vs.* The City of Memphis, 47 S. W., 138. The legislature had annexed certain outlying territory to the city of Memphis and provided a different rate of taxation for it from that levied on the property in the original city limits for a period of ten years. The court said:

"This court is of opinion that sections 3 and 4 of chapter 6 are clearly unconstitutional and void, inasmuch as they exempt the an-

nexed territory from taxes for fire, light and police protection for ten years, and for the same time expressly prohibit the district from having the advantages of this protection. This court is of opinion that taxation must always be uniform and equal throughout the extent of the same jurisdiction; that State taxes must be equal and uniform throughout the State; that county taxes must be equal and uniform throughout the county; and that a city tax must be equal and uniform throughout the city, so far as revenues for current expenses or future wants are concerned; and that this principle is fully sustained and illustrated in the decisions of this court." Citing authorities.

Here for the second time the decision of the supreme court of that State is based clearly upon the constitution of that State which provides that taxes must be uniform and equal throughout the State.

In the case of Hale *vs.* City of Kenosha and others, 29 Wis. 599, the court said:—

"If property is taxable for any purpose, it must be held taxable for all purposes of general taxation, under the rule of uniformity prescribed by section 1, article 8 of the State constitution."

This section is as follows:—"The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe."

It is true that the courts of Illinois, Ohio and several of the other States have laid down the rule that all property subject to taxation must be taxed by a uniform rule throughout the taxing districts; but an examination of all of these cases, so far as we have been able to investigate, shows that they are based upon the wording of the respective constitutions.

Let us now see what language has been used in our own organic act. Section 6 provides:—

"That the legislative power of the Territory shall extend to all rightful subjects of legislation, not inconsistent with the Constitution and laws of the United States, but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed on the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents, nor shall any law be passed impairing the right to private property, nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to the taxation shall be taxed in proportion to its value."

73 By this act the legislature is bound. It must observe and respect the limitations written therein; but this is all. The right of the territorial legislature to enact laws for the levying and collecting of taxes is granted in the organic act, which provides, "that the legislative power of the Territory shall extend to all rightful subjects of legislation, not inconsistent with the Constitution and laws of the United States," etc., and it is only when it violates some provision of the laws of Congress or the Constitution of the United States that its laws are void. The people of the different States in preparing their State constitutions, recognizing that justice demands that all classes of property subject to taxation should bear

their just proportion of the cost of government and that favoritism should not be shown any class or kind of property, have written, *uniformity* or words of like meaning into their organic law; and the courts following these provisions have declared over and over again that taxation must be uniform throughout the taxing districts and this doctrine has been declared so often, and its justice is so apparent, that even the bar have not stopped to consider the powers of the legislature in such matters when not bound by such constitutional restrictions. Section 6 of the organic act nowhere provides for uniformity of taxation. Its provisions are that: "No tax shall be imposed on the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents, nor shall any law be passed impairing the right of private property, nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to taxation shall be taxed in proportion to its value," etc. This language is not synonymous with uniformity of taxation. It only provides that:—"There shall not be made any unequal discrimination in taxing different kinds of property." And we take it that the word "unequal," as used in section 6 of the organic act, is synonymous with the word "unfair." If this be the correct interpretation of this word, then may it be said that there can be no discrimination in taxing different kinds of property? The language that there shall be no "unequal" discrimination in taxing different kinds of property clearly indicates that the legislature may discriminate or make a difference in taxing different kinds of property, but that such discrimination shall be equal or fair. Unless we give this clause of section 6 this interpretation, the word "unequal" is a meaningless word. We therefore prefer to hold that Congress understood and meant just what it said. However, it may be contended that the question here is not the power to discriminate in taxing different kinds of property, but the power to discriminate in taxing property of the same kind, and in a sense, this is true. But if the legislature can discriminate in taxing different kinds of property, why may it not fairly discriminate in taxing property of the same kind, provided that it is differently situated and unequally afforded the advantages of government. Property of the same kind in the same condition, and used for the same purpose, must be taxed by a uniform rule; otherwise each citizen would not be afforded equal protection of the laws. But even this rule does not prevent the legislature from making exemptions as to certain kinds or classes of property.

It has been held in Washington in the case of Columbia & P. S. R. R. Company *vs.* Shelberg, 34 Pac., 163, that where the legislature enacted a gross-earnings law as to all railroads, and exempted them from all other taxes, such law did not violate a provision in the organic act which was to the effect that: "All taxes shall be equal and uniform, and no distinction shall be made in the assessments between different kinds of property, but the assessments shall be according to the value of the property." And also that the law entitled the railroads to have exemption from taxation property in the

State, which was in no way used in operating such road. This case was much stronger for the State than the one now under consideration, for there was no difference in any way between the property of the railroad company, which was not used in operating its road, and the property of other citizens. And while we do not approve of the conclusion reached by that court under the facts of that particular case, we cite it to show the extent to which the courts have gone under restrictions more sweeping than those in the organic act.

In 1892 a similar case was presented to the supreme court of North Dakota, Northern Pac. R'y Co. *vs.* Barnes, 51 N. W. Rep., 386. This case involved the legality of a law which compelled all railroads to pay a certain per cent. of their gross earnings, and exempted them from all other taxation. The company owned thousands of acres of land in that jurisdiction, which was in no way used in operating the road. The court held that the law, notwithstanding their
74 organic act, the provisions of which are identical with our own, exempted all lands of the railroads from taxation, even though they were in no way used in operating such road.

The Dakota court in passing upon the question, in our judgment, failed to recognize the fundamental doctrine that property similarly situated, used for the same purpose, and which is of the same kind, should be taxed the same. Therefore when the case of The Northern Pac. R. R. Co. *vs.* Walker, 47 Fed. Rep., 681, which involved the identical question presented in the case last cited, was considered by the circuit court of the United States for the district of North Dakota, Caldwell and Thomas, J. J., presiding, they held that the act, in so far as it exempted the lands of the company which were not used in operating the road, was in violation of the organic act of the Territory of North Dakota, and also in violation of the Constitution of the United States, using this language:

"The prohibition in the organic act against making, 'any discrimination in taxing different kinds of property' necessarily implies a prohibition against any discrimination in taxing the same kind of property. It establishes the just and reasonable rule which has become fundamental in our American system of taxation, that the burdens of taxation shall fall equally upon all owners of the same kind of property. If the act in question is valid, then the wholesome and just provisions of the organic act, intended to secure equality in the burdens of taxation, and to prevent discrimination and oppression, are meaningless."

This language at first blush would perhaps seem to hold that the legislature has no power to discriminate in taxing property of the same or different kinds. This, however, is not correct. In considering this opinion, we should not forget the question presented to the court for its decision, nor should we take a portion of the opinion alone and separate it from the rest; but this language should be taken in connection with the language which precedes it, and which clearly enunciates the correct rule as we understand it, and which the learned justices had in mind when they used the language above quoted. They said:

"The franchises of railroad companies, and their earnings, and

railroad property as before defined, may well be classed by themselves for purposes of taxation, and taxed by a different method or rule from that applied to other property. This may be done because it is unlike other property. It is the difference in the character, condition, and use of this kind of property from other property that justifies the difference in classification and mode of taxation. Property of the same kind, in the same condition, and used for the same purpose, must be taxed by a uniform rule without regard to ownership. The legislature having selected land as a subject of taxation, all lands under the same conditions are subject to be taxed. The law for the taxing of lands must operate equally and uniformly upon all lands, the condition and use of which are similar. While property may be classified for the purposes of taxation, between the subjects of taxation in the same class, there must be equality. Property of the same kind, and in the same condition, and used for the same purpose, cannot be divided into different classes for purposes of taxation, and taxed by a different rule because it belongs to different owners. But this is precisely what the act under consideration seeks to do. It exempts the lands of the company from taxation simply and solely because they belong to the company, and taxes all other lands by a uniform rule according to their value. It was not competent for the legislature, either under the organic act or the fourteenth amendment of the Constitution of the United States, to classify the lands in the Territory, for purposes of taxation, into lands owned by the railroad companies and lands owned by all other persons, and declare that the former should not and the latter should be taxed."

This opinion acknowledges the rule that the legislature has the power to discriminate between property differently situated or in different conditions, or used for different purposes. However, we are not compelled to rely wholly upon general principles as recognized by the courts and text-writers, as there are cases which are squarely in point.

The constitution of Missouri provides that:—"All property subject to taxation in this State shall be taxed in proportion to its value." This is exactly the same language used in our organic act. At the time this constitution was in force in Missouri, the law provided that the salaries of the judges of the different courts should be paid out of the State treasury, and in addition to the salaries stated they were entitled to certain fees. The legislature, recognizing that the work of the judges in St. Louis county was much heavier than that of the other judges throughout the State, enacted the following statute:

"Be it enacted by the General Assembly of the State of Missouri:

"SEC. 1. That the county court of St. Louis county is hereby authorized and required, to pay out of the county treasury of St. Louis county, to the judge of the St. Louis circuit court, the judge of the St. Louis court of common pleas, and the judge of the St. Louis criminal court, each, such sum, in addition to the amount now allowed to such judge by law, as will make the total amount of

compensation received by said judge, not to exceed the sum of $3000.

"SEC. 2. The additional compensation herein provided for, shall be paid at the same stated periods, as the salary of the said judges respectively, are now paid by law."

When the judge of the court of common pleas of St. Louis county presented his claim for salary to the county court, it was disallowed on the ground that the law compelling St. Louis county to contribute to the salary of the judges in that county, when all of the other judges throughout the State were paid exclusively from the State treasury and from fees independent from the other counties, was void and unconstitutional under the provisions of the State constitution, which required that: "All property subject to taxation shall be taxed in proportion to its value." The court said:

75 "When we turn now to the consideration of the act in question, its injustice is apparent upon its own face. The citizens of a county who have been required to pay their proportion of all the expenses of administering the law throughout the whole State, are required in addition, to pay the largest part of the expense of administering the same law in their own county. The wrong done to the county is palpable, but with this admitted, the constitutionality still remains untouched.

"When the 19th section of the declaration of rights is invoked, to protect the county against this act, it is necessary to enquire into the meaning of the declaration, 'that all property, subject to taxation in this State, shall be taxed in proportion to its value.' The clause is evidently mandatory upon the General Assembly, when exercising the taxing power, and furnishes a rule which is not to be departed from. When property shall be subjected to taxation is left to their discretion, but when they have selected the subjects, the rule for assessing the tax is, in proportion to the value of the property. It is not necessary in this case to decide, whether a different rate of taxation can be imposed upon different descriptions of property, all being taxed by an *ad valorem* tax. The idea of equality in taxation, is certainly not the prominent idea conveyed by this clause; nor can we suppose that it was designed to be conveyed, when we consider that so many constitutions of other States previously adopted, contain clauses expressly enjoining equality in taxation, and when the insertion of a word or two in the clause would have expressed the idea clearly. It may be further observed, that if equality in taxation is required by this section, then the prohibition in the first section of the 10th article, that the lands of non-residents shall never be taxed higher than the lands of our citizens, is entirely superfluous * * * But it is not the wish of the court to avoid deciding the case upon principles that will settle the controversy, and it will therefore be assumed, that in order to meet this additional demand upon the county treasury, it will be necessary to increase the county tax. Does this fact establish a repugnancy between the act and the constitution? Does it disturb the rule that requires property to be taxed in proportion to its value * * * But, it is said, the General Assembly cannot pass an act by which a

burden that ought to be borne by the State treasury, shall be cast upon the county treasury, and thus the county taxation be increased. The question we are now considering is, whether an act that increases the county tax in any one county, is repugnant to the constitutional provision that requires all property to be taxed in proportion to its value. The question, whether the General Assembly has the constitutional power to pass an act that will have this effect does not in any degree depend upon the consideration or motives that produce the passage of the act. The objection to the law is, the effect on county taxation. Now the same effect would be produced by a law which required the county of St. Louis to expend an equal amount of money upon roads, public buildings, the pay of jurors, or other matters of county interest, which the General Assembly might judge to be properly a burden upon the county treasury, and such law would, upon the point now in discussion, be as liable to the objection of violating the constitution as the act now under consideration.

"All county expenses, for which a tax is to be levied, or of which the county court is authorized to make payment, are either expressly created or are authorized by law. The peculiar position and circumstances of any county may require in the judgment of the General Assembly, the expenditure of money for the accomplishment of an object of the highest interest to its inhabitants, and exclusively local in its character and benefits, but there may be no law authorizing the expenditure. It is not doubted that the General Assembly have the constitutional power to direct the authorities of the county to cause the work to be done and payment to be made out of the county treasury. * * * The General Assembly must be regarded as charged with the duty of promoting, by proper enactments, the interest of the whole and of each portion of the community, and authorized to impose the burden, arising from local works or services, upon the inhabitants of the locality benefited. When, in the exercise of their judgment, they determine that the benefit is so exclusively local as to require that the expense shall be borne by the treasury of a county, rather than by the State treasury, the clause of the constitution, requiring property to be taxed in proportion to its value is not violated. We cannot revise their judgment in such case, under this clause of the constitution and declare their acts inoperative. In relation, then, to the act now in question, it is the opinion of the court, that it is not repugnant to the 19th section of the declaration of rights."

These principles, as well as the power of the legislature to exempt, in whole or in part, property from taxation, are recognized by Mr. Cooley in his work on taxation (page 137) where he says: "The taxing which is a part of the legislative power of the State, is supreme, except where limitations are imposed." And even in States where there are constitutional provisions to the effect that taxation shall be uniform, it has been universally held that such provisions do not prohibit the legislature from making exemptions. It is only when the constitution, in express terms, prohibits exemptions, that none can be made. Of course in this territory exemp-

tions must be made by general and not special laws. But we think it cannot be urged against the law in controversy that it is a special law, for it affects all property located in Indian reservations in the territory which are attached to organized counties for taxing purposes. It has been held that the legislature has the power to exempt from taxation tools of trade, and books and furniture used in the professions, and even firemen and others have been exempted from the payment of poll-tax; nor has the legislature stopped at these, but in several States the homestead and other property of the family, not exceeding a stated value, are exempt, and these exemptions have been upheld by the courts. If these exemptions are not void, we can see no good reason why our legislature may not exempt the property in the Indian reservations, except for territorial and court funds. It is well known that all persons living on these reservations do not enjoy the advantages of those living in the organized counties; and this being true, the language of Judge Brewer in the case of Francis *vs.* A. T. & S. F. R. R. Co., 19 Kans., 309, in speaking of taxation in the unorganized counties of the State of Kansas, is applicable:—

76 "May not the legislature prescribe the conditions upon which State protection will be afforded to property in that territory? And what section of the Constitution limits the extent and character of such conditions? Briefly, it may be stated, that the unorganized counties are necessarily a part of the State taxing district, or they may be excluded by legislative action; if the former, then, if the claim of the counsel is correct, that a failure to provide for taxing all the property in the taxing district is fatal to the tax, there has hitherto been no valid State tax; if the latter, then the property in those counties is outside of the taxing district, yet subject to taxation; and where is the constitutional restriction on the power of the legislature?

"It is doubtless true, that results do not change rules, and that consequences may not be invoked to overthrow established principles, and that courts may not disregard plain constitutional requirements to save from the injurious effects of illegal legislative action; but surely, the fact that during these sixteen years of State taxation, the validity of no State tax has ever been challenged on the ground that the machinery for assessment and taxation plainly leaves unreached for taxation a portion of the property within the State, the taxing district, is evidence of no little value, that, by the common judgment of all, the constitutional provision above quoted does not require such construction. But if it be not unconstitutional to relieve all property in the unorganized counties from State taxation, is it any more unconstitutional to relieve only a part of such property? Does the law become more unconstitutional the nearer it approaches to a full compliance with the strict letter of the Constitution?"

And so here, cannot the territorial legislature prescribe the conditions upon which the persons living upon the Indian reservations may enjoy the benefits of county organization? We think it may; and there is nothing in the organic act which prevents the law-

making power from subjecting property to taxation for certain purposes, and exempting it from taxation for other funds. It would be a strained construction of the organic act to say that property may be absolutely exempted by the legislature, but that it cannot make a partial exemption of it. All the organic act requires is that the legislature shall cause all property subject to taxation to be taxed in proportion to its value as to the funds or purposes for which the legislature may designate, keeping in mind, however, the fundamental principle that all property of the same kind and in the same condition, used for the same purposes, and afforded equal protection of the law, must be subjected to the same taxation. The powers of the legislature extend to all rightful subjects of legislation, not in conflict with the laws of Congress or the Constitution of the United States. The law in controversy, as heretofore observed, in no way conflicts with either, and its enactment was clearly within the legislative power.

In the case of Carroll *vs.* Gerlach, as treasurer, *et al.*, decided at the present term of court, it was held that a court of equity will not restrain the collection of a tax until the party has exhausted his statutory remedy before the board of county commissioners and given that body an opportunity to correct the error if any has been made. But that rule does not apply where the assessment or levy is absolutely void. Therefore the rules enunciated in this case in no way conflict with the case last decided.

Therefore the judgment of the trial court is reversed, and each of the cases considered herein is hereby remanded to the lower court, with instructions to enter judgment perpetually enjoining the collection of all taxes in controversy herein, except the taxes for territorial and court funds, upon payment by the respective appellants of the whole amount of said taxes and penalties, if any, accrued prior to the bringing of the suits herein, into court, or the payment of such taxes to the treasurer of Noble county, such payment to be evidenced to the court by the treasurer's receipts therefor. The costs of each of these cases to be taxed to the county of Noble.

All the justices concurring except Hainer, J., who presided in the trial of the cause below, not sitting.

77 And afterward, to wit: August 12, 1901, a petition for rehearing was filed in said cause, which said petition for rehearing, together with endorsement thereon, reads in words and figures as follows, to wit:

78 By Jessie Pardoe, Deputy.

In the Supreme Court of the Territory of Oklahoma.

ISAAC T. PRIOR ET AL., Plaintiffs in Error,
vs.
GEORGE A. FOSTER ET AL., Defendants in Error. } No. 1042.

Petition for Rehearing.

The appellees in the above-entitled cause respectfully pray the court for a rehearing therein, and for cause thereof show that questions of law, decisive of the case, were duly submitted by counsel but were overlooked by the court, to wit:

I.

The act of 1899 exempts from taxation for all but court and territorial funds property only—

Filed Aug. 12, 1901.

BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

79 in those organized reservations "which shall be or may hereafter be attached to any county for judicial purposes."

The language of the statute was prospective—future—could not refer to or include the Otoe or Ponca or Osage reservations, as they had long before been attached to Noble and Pawnee counties.

As the language literally taken did not include those reservations no construction was allowable to include them.

Chicago R'y v. Gaffey, 120 U. S. 575.

Exemptions from taxation are not to be extended beyond the exact and express requirements of the language used, construed *strictissimi* juris against the exemption.

Vicksburg R'y v. Dennis, 116 U. S. 668.
Yazoo R'y v. Thomas, 132 U. S. 174.
Sutherland Stat. Const., sec. 364.

If it is necessary to construe the language, the exemption does not exist for every construction and every doubt must be resolved against the exemption.

Ohio Life Co. v. De Bolt, 16 How. 435–'6.
Chicago R'y Co. v. Gaffey, 120 U. S. 575.

80 Every presumption is against the exemption and proof of the intent to exempt must be clear beyond a reasonable doubt.

25 Encl. Law, page- 158–'59.

Under this rule the language of the act of 1899 does not include reservatons which then were, and long had been, attached to counties.

This distinction was not noticed in the opinion handed down.

II.

In the definition of the word "unequal" in section 6 of the organic act, the opinion omits to notice, and does not follow the history of the Constitution and the acts of Congress upon the subject of equal and uniform taxation where those words have been constantly used as of the same meaning; and local or special tax laws are prohibited to wit:

"All duties, imposts and excises shall be uniform throughout the United States."

Artice 1, section 8. That is throughout the United States they shall be the same.

Miller on Constitution, p. 239.

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory, * * * and to the full and equal benefit of all laws * * * and shall be subject to the punishment, pains, penalties, taxes, licenses
81 and exactions of every kind and to no other."

Sec. 1977, *U. S. R. S.* 1878.

"No tax or charge shall be imposed or enforced by any State upon any person immigrating thereto from a foreign country which is not *equally* imposed and enforced upon every person immigrating to such State from any other foreign country."

Sec. 2164, *U. S. R. S.* 1878.

(As to Washington Territory.)

"* * * And all taxes shall be *equal* and uniform."

Sec. 1924, *U. S. R. S.* 1878.

"* * * The legislative assemblies of Colorado, Dakota and Wyoming shall not pass any law impairing the rights of private property, nor make any discrimation in taxing different kinds of property; but all property subject to taxation shall be taxed *in proportion* to its value."

Sec. 1925, *U. S. R. S.* 1878.

"An act to prohibit the passage of local or special laws in the Territories of the United States. * * *

"*Be it* enacted, etc., That the legislatures of the Territories of the United States now or hereafter to be organized shall not pass
82 local or special laws in any of the following enumerated cases, that is to say: * * *

"For the assessment and collection of taxes for territorial, county, township or road purposes."

Act July 30, 1886.

24 *Stat. L.* 170.

It will hardly be claimed that the spirit of these statutes is not the same as the spirit of the State constitutions quoted in the opinion.

The act of 1899 is surely not uniform throughout the Territory but is local or special legislation within the meaning of the act of 1886. It provides that property in certain localities shall be taxed differently from the like property in other localities in the same taxing district.

It provides that no matter what conditions exist, property in the localities favored shall not be taxed except for territorial and court funds.

The court must recognize the fact that this omits any contribution for the poor and insane fund, salary fund, contingent fund or supply fund.

Each of these funds is essential to the support of county government; a farmer or stock-raiser in the reservation gets as much benefit from these as any farmer or stock-raiser in the county. The poor and insane from the reservatton are cared for by the county
83 until sent to Norman. The reservation property should contribute to support these funds and the act of 1899, by wholly exempting it, favors the reservation to that extent.

III.

The meaning of "unequal" as defined in Webster's Dictionary includes both the meaning given in the opinion and the meaning contended for by us. Not antagonistic, but synonymous.

IV.

The rule suggested in the opinion under the definition "unfair" would justify the legislation in exempting other localities from the general taxation of their districts, or in exempting classes of persons in the district from the general taxation for their district; *e. g.* exempt from school tax, the property of all persons who had no children attending school, which is well denied by all the authorities.

V.

The court wholly overlooks the point that the act of 1886 (24 *Stat. L.* 170) prohibits special or local laws for the assessment or collection of taxes for territorial, county, township or road purposes.
84 The act of 1899 is surely special and local as to the assessment and collection of taxes for county purposes; and is therefore invalid.

For these reasons we respectfully pray for a rehearing in this case and that the decision of the court be modified and the judgment of the district court be affirmed.

HORACE SPEED,
Attorney for Appellees.

85 And afterward, to wit: at the said June, 1901, term of said court, on the 6th day of September, 1901, the following further proceeding was had in said cause, to wit:

I. T. PRYOR ET AL., Plaintiffs in Error,
vs.
GEORGE A. FOSTER, Sheriff, *et al.*, Defendants in Error. } #1042.

And now this cause comes on for decision by the court upon the petition for rehearing filed therein; and the court having duly considered said petition, and being fully advised in the premises, finds that the same should be denied at the cost of defendants in error.

It is therefore ordered and adjudged by the court, that the petition for rehearing in this cause be and the same is now hereby denied at the cost of defendants in error.

86 And afterward, to wit: September 21, 1901, of said June term, there was filed in said court a petition for an order of appeal to the Supreme Court of the United States, together with two affidavits showing the amount in controversy herein, which said petition for appeal and affidavits read in words and figures, as follows, to wit:

87 In the Supreme Court of the Territory of Oklahoma.

I. T. PRYOR ET AL., Plaintiffs in Error,
vs.
G. T. BRYAN, County Treasurer of Noble County, and George A. Foster, Sheriff of Noble County, Defendants in Error. } No. 1042. Petition for Appeal.

The above-named defendants in error, conceiving themselves aggrieved by the several judgments and decrees entered in this case to wit:

The judgment and decree entered herein on the 6th day of July, 1901, reversing the judgment of the district court of Noble county in the premises; and also the judgment and decree rendered herein on the 6th day of September, 1901, overruling and denying the application and petition of the defendants in error for a rehearing herein, do hereby appeal from said judgments and decrees, and each and both of the same to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and defendants in error allege that the amount in controversy in this action exceeds the sum of five thousand dollars ($5,000.00) and refer to the affidavits filed herewith as evidence thereof; and they pray that this, their appeal may be allowed, and that the transcript of the record, pleadings, proceedings, and papers upon which said judgments and decrees were made, duly authenticated, may be sent to the Supreme Court of the United States, and that the court may fix the bond of said appellants to be given within a reasonable time, and enter all necessary orders herein allowing the foregoing appeal.

HORACE SPEED,
JOHN C. HUGHES, AND
HENRY S. JOHNSTON,
Attorneys for Defendants in Error and Appellants Herein.

88 In the Supreme Court of the Territory of Oklahoma.

I. T. PRYOR ET AL., Plaintiffs in Error,
vs.
G. T. BRYAN, County Treasurer of Noble County, and George A. Foster, Sheriff of Noble County, Defendants in Error.

No. 1042. Affidavit of Amount in Controversy.

TERRITORY OF OKLAHOMA, *Supreme Court,* } *ss:*

John C. Hughes, being of lawful age and having been first duly sworn, upon his oath deposes and says, that he is one of the attorneys for the defendants in error and appellants in the above-entitled cause, and knows the nature of said controversy; that he has read the pleadings herein, also the judgments and decrees rendered herein; that he knows and is familiar with the taxes, assessments, levies and matters in controversy in this suit and the values and amount thereof; that the taxes, the collection of which *were* enjoined by the judgment and decision of said supreme court herein, amounted to more than five thousand dollars ($5,000), exclusive of penalties, interest and cost, at the date of said judgments and decrees, and that no part of the same has been paid.

JOHN C. HUGHES.

Subscribed and sworn to before me this 21st day of September, 1901.

W. M. ROBBINS,
Notary Public.

My commission expires March 24th, 1905.

[SEAL.]

Endorsed on back as follows, to wit: Filed Sept. 21, 1901. Benj. F. Hegler, clerk supreme court. By Jessie Pardoe, deputy.

89 TERRITORY OF OKLAHOMA, *Supreme Court,* } *ss:*

Henry S. Johnston of lawful age being first duly sworn deposes and says that he is the county attorney of Noble county, and is one of the attorneys for appellant herein; that he knows and is familiar with the taxes, assessments levies and matters in controversy in this suit and the values and amounts thereof; that they exceed the sum of five thousand dollars ($5000.00) exclusive of penalties, interests and costs at the date of aforesaid judgments and decrees and that no part of the same has been paid.

HENRY S. JOHNSTON.

Subscribed and sworn to before me this 21st day of September, 1901.

W. M. ROBBINS,
Notary Public.

My commission expires March 24th, 1905.

[SEAL.]

Endorsed on back as follows, to wit: Filed Sept. 21, 1901. Benj. F. Hegler, clerk supreme court. By Jessie Pardoe, deputy. No. 1042—In supreme court of Territory of Oklahoma—I. T. Pryor, *et al.*, plaintiffs in error,—*vs.*—G. T. Bryan, treasurer, etc., *et al.*,—defendant- in error—Petition for appeal and affidavits—Filed Sept. 21, 1901. Benj. F. Hegler, clerk supreme court—by Jessie Pardoe, deputy.

90 And afterward to wit: on the same day, September 21, 1901, an order was made granting said appeal, which order reads in words and figures as follows, to wit:

91 In the Supreme Court of the Territory of Oklahoma.

I. T. PRYOR ET AL., Plaintiffs in Error,
vs.
G. T. BRYAN, County Treasurer of Noble County, and George A. Foster, Sheriff of Noble County, Defendants in Error.
} No. 1042. Order Granting Appeal.

Now on this 21st day of September, 1901, is presented the petition for an appeal herein, and it appearing to the court that there is more than five thousand dollars involved in the appeal prayed for herein, exclusive of penalties, interests and costs and that the defendants in error are entitled to an appeal to the Supreme Court of the United States, as per the prayer of their petition;

It is therefore by the court ordered that the petition of the defendants in error for an appeal to the Supreme Court of the United States be allowed, on giving a bond to the approval of the court or judge, in the sum of one thousand dollars.

JNO. H. BURFORD,
Chief Justice of the Supreme Court.

Attest: BENJ. F. HEGLER,
Clerk Supreme Court.

[SEAL.]

Endorsed on back as follows, to wit: No. 1042—In the supreme court of the Territory of Oklahoma—I. T. Pryor, *et al.*, plaintiffs in error—*vs.* George A. Foster, sheriff and G. T. Bryan, treasurer of Noble county—defendants in error—Order allowing appeal—Filed Sept. 21, 1901. Benj. F. Hegler, clerk supreme court.

92 And at the same time to wit: September 21, 1901, there was filed in said supreme court, assignment of errors on appeal, which reads in words and figures as follows, to wit:

93 In the Supreme Court of the Territory of Oklahoma.

I. T. PRYOR ET AL., Plaintiffs in Error,
vs.
G. T. BRYAN, County Treasurer of Noble County, and George A. Foster, Sheriff of Noble County, Defendants in Error. } No. 1042.

Assignment of Errors on Appeal.

Now on this 6th day of September, 1901, come the defendants in error, G. T. Bryan, county treasurer of Noble county and George A. Foster, sheriff of Noble county, by Horace Speed, Henry S. Johnston and John C. Hughes, their attorneys, and say that the decree and judgment entered in said cause on the 6th day of July, 1901, reversing the judgment of the district court of Noble county, and the judgment and decree entered in said cause on the 6th day of September, 1901, denying and refusing the petition of defendants in error for a rehearing herein, are each and both, erroneous and against the justice and rights of the defendants in error and that in the record and proceedings aforesaid, there is manifest error prejudicial to the justice and rights of the defendants in error in this to wit:

First. That said supreme court erred in reversing the judgment of the district court of Noble county, Oklahoma Territory, herein.

Second. That said supreme court erred in denying the petition of defendants in error for a rehearing herein.

Third. That said supreme court erred in holding that the petition of plaintiffs in error in the district court of Noble county stated facts sufficient to constitute a cause of action.

Fourth. That said supreme court erred in not affirming the said judgment of the district court of Noble county dissolving the temporary injunction therein granted plaintiffs in said action in said district court.

Fifth. That said supreme court erred in adjudging illegal, and in perpetually enjoining the defendants in error and appellants herein from levying or attempting to levy or collect the following tax levies for county purposes:

94

For salary fund	6 mills
For court fund	3 mills
For poor and insane fund	1 mill
For road and bridge fund	2 mills
For contingent fund	1 mill
For supply fund	2 mills
For county school fund	2 mills
For sinking fund	4 mills

Sixth. That said supreme court by its said judgments and decree should have adjudged and decreed each and all of said tax levies legal, and that defendants in error should rightfully proceed to collect the same.

Seventh. That said supreme court erred in holding that the territorial legislature of Oklahoma Territory had the power under the Constitution of the United States and under section six of the organic act of this Territory to exempt property in the Indian reservations attached for judicial and taxing purposes to counties in this Territory, from taxes levied for county purposes as aforesaid, other than for territorial court funds.

Eighth. That said supreme court erred in holding that article 2, chapter 28, Laws of Oklahoma for 1899, approved March 10th, 1899, which provides: "That from and after the passage and approval of this act no taxes shall be assessed, levied or collected in any unorganized country, district or reservation which shall be or which may hereafter be attached to any county for judicial purposes, except taxes for the territorial and court funds. All acts and parts of acts in conflict herewith are hereby repealed," is not void for conflict with the Constitution of the United States and with section 6 of the organic act of the Territory of Oklahoma.

Ninth. That the supreme court erred in holding that the act of the territorial legislature approved March 10th, 1899, to wit: article 2 of chapter 28, of the Laws of Oklahoma Territory, 1899, exempting property in the Ponca, Otoe and Missouri reservations for the reason that those reservations had been attached for judicial purposes to Noble county, long before the passage of the act, and under that attachment continually had continued until now and were not attached after the passage of the act.

95 Tenth. The supreme court erred in holding that the said act of the Oklahoma legislature was no special legislation within the meaning of the act of Congress of July 30th, 1886.

Eleventh. The supreme court erred in reversing the decision of the district court which had sustained the demurrer to the petition upon the ground that the petition did not state facts sufficient to constitute a cause of action; and said supreme court erred in holding that the petition did state facts sufficient to constitute a cause of action.

Twelfth. The supreme court erred in holding that the authority to tax conferred by the organic act of the Territory, and by the act of Congress of July 30, 1886, was abrogated and taken away in part by the act of the territorial legislature of March 10th, 1899.

HORACE SPEED,
JOHN C. HUGHES,
HENRY S. JOHNSTON,
Attorneys for Defendants in Error.

Endorsed on the back as follows, to wit: No. 1042—In supreme court of the Territory of Oklahoma—I. T. Pryor, *et al.*, plaintiffs in error, *vs.* George A. Foster, sheriff and G. T. Bryan, treasurer, defendants in error.—Assignment of errors—Filed Sept. 21, 1901—Benj. F. Hegler, clerk supreme court—By Jessie Pardoe, deputy.

96 And thereafter to wit: on the 1st day of October, 1901, said plaintiffs in error filed their appeal bond herein, which reads in words and figures as follows, to wit:

97 In the Supreme Court of the Territory of Oklahoma.

I. T. PRYOR; I. T. PRYOR & Co., a Partnership Composed of I. T. Pryor, J. H. Morris, and Howard Ross; C. E. Keeran; Stafford Land & Cattle Co., a Foreign Corporation Doing Business in the Territory of Oklahoma under the Laws Thereof; M. L. Hite and W. R. Moore; P. S. Weatherspoon and Philip Weatherspoon, Partners Doing Business under the Firm Name and Style of Weatherspoon & Son; P. S. Weatherspoon and Frank Weatherspoon, Doing Business under the Firm Name and Style of P. S. & F. Weatherspoon; P. S. Weatherspoon and Ed. T. Bomar, Partners Doing Business under the Firm Name and Style of Weatherspoon & Bomar, 101 Live Stock Company, a Corporation, Plaintiffs in Error,

vs.

GEORGE A. FOSTER, Sheriff of Noble County, Oklahoma Territory, and G. T. Bryan, as Treasurer of Noble County, Oklahoma Territory, Defendants in Error.

Undertaking on Appeal.

Know all men by these presents that we, George A. Foster, sheriff of Noble county, Oklahoma Territory, and G. T. Bryan, as treasurer of Noble county, Oklahoma Territory, principals, and Edward F. Tebbe, Fred G. Moore and Charles E. Dennis, as sureties, are held and firmly bound unto I. T. Pryor; I. T. Pryor & Co., a partnership composed of I. T. Pryor, J. H. Morris and Howard Ross; C. A. Keeran; Stafford Land & Cattle Co., a foreign corporation doing business in the Territory of Oklahoma, under the laws thereof; M. L. Hite and W. R. Moore; P. S. Weatherspoon and Philip Weatherspoon, partners doing business under the firm name and style of Weatherspoon & Son; P. S. Weatherspoon and Frank Weatherspoon, doing business under the firm name and style of P. S. & F. Weatherspoon; P. S. Weatherspoon and Ed. T. Bomar, partners doing business under the firm name and style of Weatherspoon & Bomar, 101 Live Stock Company, a corporation, plaintiffs in error, in the full and just sum of one thousand ($1000.00) dollars, to be paid to the said I. T. Pryor; I. T. Pryor & Co., a partnership composed of I. T. Pryor, J. H. Morris and Howard Ross; C. A. Keeran, Stafford Land & Cattle Co., a foreign corporation doing business in the Territory of Oklahoma,
98 under the laws thereof; M. L. Hite; and W. R. Moore; P. S. Weatherspoon and Philip Weatherspoon, partners, doing business under the firm name and style of Weatherspoon and Son; P. S. Weatherspoon and Frank Weatherspoon doing business under the firm name and style of P. S. & F. Weatherspoon;

P. S. Weatherspoon and Ed. T. Bomar, partners doing business under the firm name and style of Weatherspoon and Bomar, 101 Live Stock Company a corporation, their certain attorneys, successors, executors, administrators and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seal and dated this 26th day of September in the year of our Lord one thousand nine hundred and one.

Whereas lately, at a session of the supreme court of the Territory of Oklahoma in a suit depending in said court between I. T. Pryor, *et al.*, plaintiffs in error, and George A. Foster, sheriff of Noble county, *et al.*, defendants in error, being cause No. 1042 in said supreme court, a final judgment and decree was rendered against the said defendant in error; and the said defendants in error have prosecuted and been allowed an appeal to the Supreme Court of the United States to reverse the judgment and decree rendered in the above-entitled action by the supreme court of the Territory of Oklahoma, on July 6th, 1901, and on September 6th, 1901, and a citation directed to said plaintiffs in error and each of them, citing and admonishing them and each if them to be and appear in the Supreme Court of the United States at Washington, D. C.;

Now, the condition of the above obligation is such that if the said George A. Foster, sheriff of Noble county, Oklahoma Territory, and G. T. Bryan, as treasurer of Noble county, Oklahoma Territory, said defendants in error and appellant herein shall prosecute said appeal to effect and answer all costs and damages if they fail to make good their plea then the above obligation to be void; otherwise to remain in full force and virtue.

(Signed) GEO. A. FOSTER, [SEAL.]
Sheriff of Noble County, Oklahoma Territory.
(Signed) G. T. BRYAN, [SEAL.]
Treasurer of Noble County, Oklahoma Territory.
EDWARD F. TEBBE. [SEAL.]
FRED G. MOORE. [SEAL.]
CHARLES E. DENNIS. [SEAL.]

Sealed and delivered in the presence of

LAWRENCE L. COWLEY.
BERTHA GEORGE.

99 In the Supreme Court of the Territory of Oklahoma.

I. T. PRYOR; I. T. PRYOR & Co., a Partnership Composed of I. T. Pryor, J. H. Morris, and Howard Ross; C. A. Keeran; Stafford Land & Cattle Company, a Foreign Corporation Doing Business in the Territory of Oklahoma under the Laws Thereof; M. L. Hite and W. R. Moore; P. S. Weatherspoon and Philip Weatherspoon, Partners Doing Business under the Firm Name and Style of Weatherspoon & Son; P. S. Weatherspoon and Frank Weatherspoon, Doing Business under the Firm Name and Style of P. S. & F. Weatherspoon; P. S. Weatherspoon and Ed. T. Bomar, Partners Doing Business under the Firm Name and Style of Weatherspoon & Bomar, 101 Live Stock Company, a Corporation, Plaintiffs in Error,

vs.

GEORGE A. FOSTER, Sheriff of Noble County, Oklahoma Territory, and G. T. Bryan, as Treasurer of Noble County, Oklahoma Territory, Defendants in Error.

} No. 1042.

Justification Bond.

We, Edward F. Tebbe, Fred G. Moore and Charles E. Dennis, each being first duly sworn according to law on our oath do depose and say that we are residents of the county of Noble in the Territory of Oklahoma; that we are each of lawful age and citizens of the United States; that we are each the same party who signed the above and foregoing undertaking on appeal as one of the sureties thereon; that we have each read said bond and know the contents thereof; that we further say that we are each worth the sum of one thousand dollars ($1,000.00) over and above all our debts, liabilities and legal exemptions.

EDWARD F. TEBBE.
FRED G. MOORE.
CHARLES E. DENNIS.

Subscribed and sworn to before me this 26th day of September, A. D. 1901.

W. M. ROBBINS,
Notary Public.

My commission expires March 24, 1905.

[SEAL.]

Endorsed on back as follows, to wit: No. 1042—In the supreme court of the Territory of Oklahoma—I. T. Pryor, *et al.*, plaintiffs in error, *v.* George A. Foster, sheriff, etc., *et al.*, defendants in error—Undertaking on appeal—Approved, Sept. 28, 1901, Jno. H. Burford, chief justice.—Filed Oct. 1, 1901. Benj. F. Hegler, clerk supreme court.

100 And on the 1st day of October, 1901, there was filed with the clerk of said court in said cause, a copy of the citation therein, which said copy is in words and figures as follows, to wit:

101 In the Supreme Court of the Territory of Oklahoma.

I. T. PRYOR; I. T. PRYOR & Co., a Partnership Composed of I. T. Pryor, J. H. Morris, and Howard Ross; C. A. Keeran; Stafford Land and Cattle Co., a Foreign Corporation Doing Business in the Territory of Oklahoma under the Laws Thereof; M. L. Hite and W. R. Moore; P. S. Weatherspoon and Philip Weatherspoon, Partners Doing Business under the Firm Name and Style of Weatherspoon and *Frank Weatherspoon &* Son; P. S. Weatherspoon and Frank Weatherspoon, Doing Business under the Firm Name and Style of P. S. and F. Weatherspoon; P. S. Weatherspoon and Ed. T. Bomar, Partners Doing Business under the Firm Name and Style of Weatherspoon and Bomar, 101 Live Stock Company, a Corporation, Plaintiffs in Error,

vs.

GEORGE A. FOSTER, Sheriff of Noble County, Oklahoma Territory, and G. T. Bryan, as Treasurer of Noble County, Oklahoma Territory, Defendants in Error.

Citation.

UNITED STATES OF AMERICA, ss:

To I. T. Pryor; I. T. Pryor and Co., a partnership composed of I. T. Pryor, J. H. Morris, and Howard Ross; C. A. Keeran; Stafford Land & Cattle Co., a foreign corporation doing business in the Territory of Oklahoma under the laws thereof; M. L. Hite, W. R. Moore; P. S. Weatherspoon and Philip Weatherspoon, partners doing business under the firm name and style of Weatherspoon and Son; P. S. Weatherspoon and Frank Weatherspoon, doing business under the firm name and style of P. S. and F. Weatherspoon; P. S. Weatherspoon and Ed. T. Bomar, partners doing business under the firm name and style of Weatherspoon and Bomar, 101 Live Stock Company, a corporation, and S. H. Harris, James B. Diggs, and W. L. Barnum, attorneys for plaintiffs in error, Greeting:

Whereas, George A. Foster, sheriff of Noble county, Oklahoma Territory and G. T. Bryan as treasurer of Noble county, Oklahoma Territory, have lately appealed to the Supreme Court of the United States from the judgments and decrees rendered in the supreme court of the Territory of Oklahoma on the 6th day of July, 1901, and on the 6th day of September, 1901, in favor of you, the said I. T. Pryor; I. T. Pryor and Co., a partnership composed of I. T. Pryor, J. H. Morris and Howard Ross; C. A. Keeran; Stafford Land and Cattle Co., a foreign corporation doing business in the
102 Territory of Oklahoma, under the laws thereof; M. L. Hite; and W. R. Moore; P. S. Weatherspoon, and Philip Weatherspoon, partners doing business under the firm name and style of

Weatherspoon and Son; S. P. Weatherspoon and Frank Weatherspoon, doing business under the firm name and style of P. S. & F. Weatherspoon; P. S. Weatherspoon, and Ed. T. Bomar, partners doing business under the firm name and style of Weatherspoon and Bomar, 101 Live Stock Company, a corporation, and having filed the security required by law you are therefore hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at the city of Washington, District of Columbia, on to wit, the 6th day of October, 1901, at 9 o'clock, a. m., and within thirty days from the day this citation bears date, to do and receive what may pertain to justice to be done in the premises.

Given under my hand at the city of Guthrie in the Territory of Oklahoma, on this 28th day of September, 1901.

JNO. H. BURFORD,
Chief Justice.

Service of the foregoing citation and due acceptance is hereby admitted this 30th day of September, 1901.

S. H. HARRIS,
Attorneys for Plaintiffs in Error and Appellees.

Endorsed on back as follows, to wit: Copy. No. 1042—In the supreme court of the Territory of Oklahoma—I T. Pryor, *et al.*, plaintiffs in error, *v.* George A. Foster, sheriff, etc., *et al.*, defendants in error. Citation and service thereof—Filed Oct. 1/1901. Benj. F. Hegler, clerk supreme court.

103 UNITED STATES OF AMERICA, } *ss:*
Territory of Oklahoma, }

In the Supreme Court.

I, Benj. F. Hegler, clerk of the supreme court of the Territory of Oklahoma, do hereby certify that the foregoing pages, numbered from 1 to 102 inclusive, are a full, true and complete transcript of the record and of the proceedings in said supreme court of said Territory, in the cause of I. T. Pryor, *et al.*, plaintiffs in error, *vs.* Geo. A. Foster, sheriff Noble county, O. T., and G. T. Bryan, treasurer of said county, defendants in error, as the same remain upon the files and of record in the supreme court of said Territory.

Seal Supreme Court, Territory of Oklahoma.

In witness whereof, I hereto set my hand and affix the seal of said supreme court, at my office in the city of Guthrie, this 1st day of October, 1901, and of the Independence of the United States of America one hundred and twenty-six.

BENJ. F. HEGLER,
Clerk Supreme Court of the Territory of Oklahoma.

Endorsed on cover: File No. 18,281. Oklahoma Territory—supreme court. Term No. 173. George A. Foster, sheriff of Noble county Oklahoma Territory *et al.* appellants *vs.* I. T. Pryor, I. T. Pryor & Company, a partnership composed of I. T. Pryor J. H. Morris & Howard Ross; *et al.*—Filed October 11", 1901.

19827

No. 173.

Brf. of Speed for Appellants.

FILED
JUN 16 1902

Filed June 16, 1902.

IN THE

SUPREME COURT

GEORGE A. POSTER as Sheriff of Noble County, Oklahoma Territory, and G. T. BRYAN as Clerk of said County.
Appellants.

vs.

I. T. PRYOR & Co., a co-partnership composed of I. T. Pryor; J. H. Morris; Howard Ross; I. T. Pryor; C. A. Keeran; The Stafford Land and Cattle Co., a Foreign Corporation doing business in the Territory of Oklahoma under the laws thereof; M. L. Hite; W. R. Moore; P. S. Witherspoon and Philip Witherspoon, partners doing business under the firm name and style of Witherspoon & Son; P. S. Witherspoon and Frank Witherspoon, doing business under the firm name and style of P. S. & F. Witherspoon; P. S. Witherspoon and Ed. P. Bomar, partners doing business under the firm name and style of Witherspoon & Bomar, and the 101 Livestock Company, a corporation.
Appellees.

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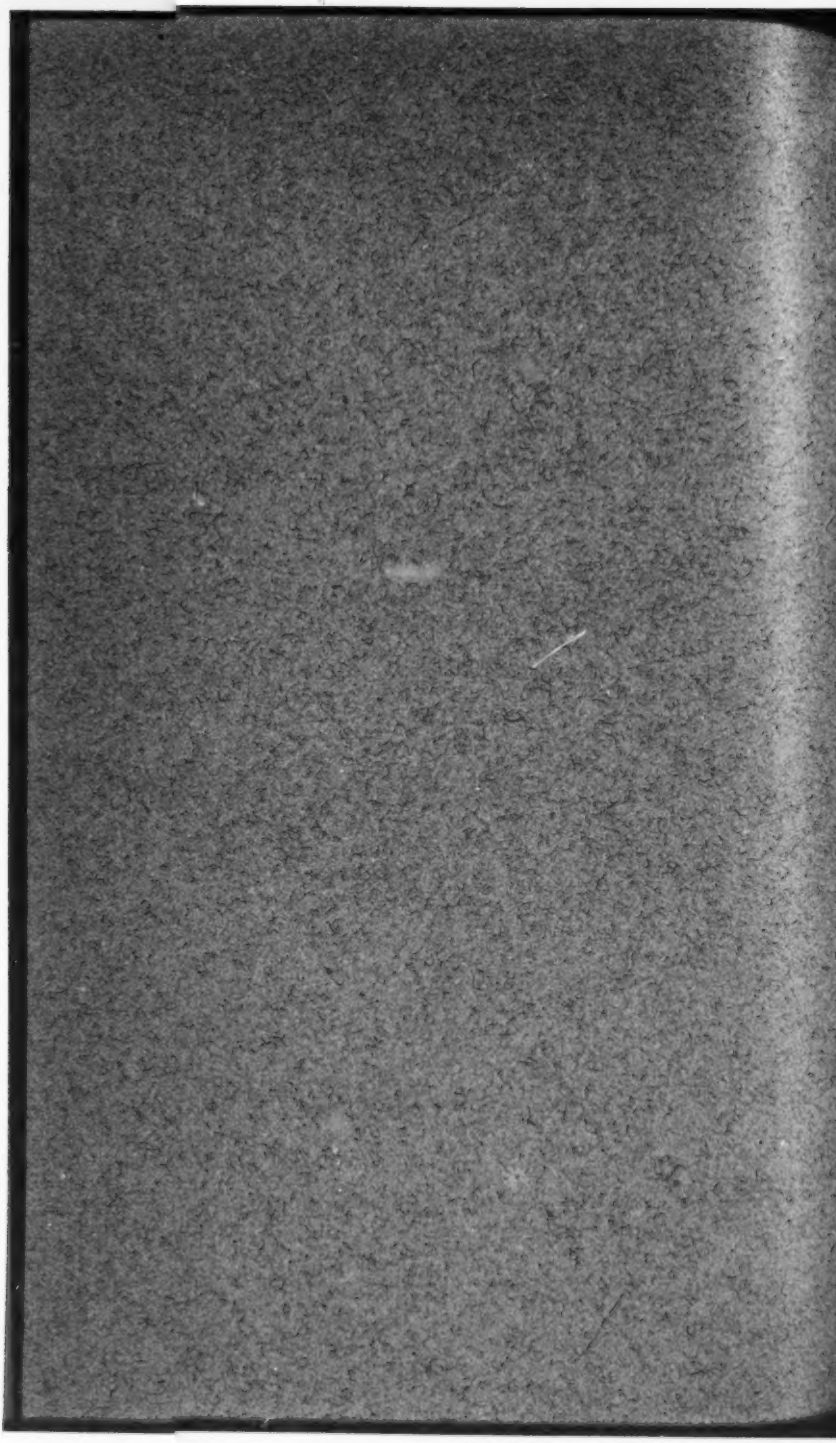
BRIEF OF APPELLANTS.

HORACE SPEED,
Attorney for Appellants.



IN THE
SUPREME COURT.

GEORGE A. FOSTER as Sheriff of Noble County, Oklahoma Territory, and G. T. BRYAN as Clerk of said County.
Appellants.

vs.

I. T. PRYOR & Co., a co-partnership composed of I. T. Pryor; J. H. Morris; Howard Ross; I. T. Pryor; C. A. Keeran; The Stafford Land and Cattle Co., a Foreign Corporation doing business in the Territory of Oklahoma under the laws thereof; M. L. Hite; W. R. Moore; P. S. Witherspoon and Philip Witherspoon, partners doing business under the firm name and style of Witherspoon & Son; P. S. Witherspoon and Frank Witherspoon, doing business under the firm name and style of P. S. & F. Witherspoon; P. S. Witherspoon and Ed. P. Bomar, partners doing business under the firm name and style of Witherspoon & Bomar, and the 101 Livestock Company, a corporation.
Appellees.

BRIEF OF APPELLANTS.

STATEMENT OF FACTS.

This is an appeal from the decision of the Supreme Court of Oklahoma Territory, reversing a decree of the District Court of Noble county in said Territory.

This case is in its facts and principals substantially the same as the cases of Gay vs. Thomas, 169 U. S. 264,

and Wagoner vs. Evans, 170 U. S. 588, save one question arising under a Territorial Statute enacted since those decisions, the matter being the taxation of cattle and other property in Indian reservations attached for judicial purposes to Noble county, Oklahoma Territory. The Ponca, Otoe and Missouri Indian reservations were attached to that county by an order of the Supreme Court pursuant to the act of congress organizing Oklahoma Territory, (Section eight, act of Congress May 2, 1890, 26 St. L. page 81.)

After the decisions of this court in the cases of Gay vs. Thomas, and Wagoner vs. Evans above named, a bill was put through the Oklahoma legislature which in substance was intended to do away with the effect of those decisions. The bill provided that property in the Indian reservations attached to counties should be taxed for the territorial funds, and for what was called in the bill, court funds, but not for any other of the county funds. (Session Laws 1899, p. 218). The county officers of Noble county proceeded to levy the taxes upon property in the reservations under the statements of law made by this court in the decisions above named, for territorial and all county funds. Thereupon the appellees filed a petition in the District Court of Noble county for an injunction, alleging that the county commissioners of Noble county had ordered the sheriff and treasurer to collect the taxes for both territorial and county purposes on all property in the reservation, and set out the purposes for which the levies were to be made showing that the county levy included funds as follows: Salary, court, poor and insane, road and bridge, contingent, supply, county school and sink-

ing, of which the court fund amounted to three mills and the other funds amounted to eighteen mills, in addition to the territorial levy of five and two-tenths mills, and praying that the collection of all the county funds except the court fund should be enjoined.

A demurrer to the petition as not stating facts sufficient to constitute a cause of action was filed, sustained, and a decree entered dismissing the petition.

Upon appeal to the Supreme Court of the Territory, the decision of the District Court was reversed. From this decision the county officers appeal.

ARGUMENT.

I.

The act of the Oklahoma legislature of 1899 is void because in contravention of the acts of congress.

II.

The act of 1899, whatever may have been intended, does not apply to the Ponca and Otoe and Missouri reservations.

III.

There can be no question that the taxes here objected to are valid and collectible under the decisions in Gay v. Thomas and Wagoner vs. Evans, supra, but objection is now made that, since those decisions were rendered, an exemption from part of the taxes is granted by the act of the Oklahoma legislature of March 10, 1899, (Oklahoma Session Laws 1899, pages 218 and 219.)

We contend that this act is void as being in plain violation of the act of congress of July 30, 1886, section

one of which provides that the legislatures of the Territories shall not pass local or special laws in any of the following enumerated classes, that is to say: * * * * "For the assessment and collection of taxes for territorial, county, township or road purposes."

We also contend that this act is in violation of the act of congress of May 2, 1890, (26 Stat. 81), the organic act of this Territory, section six of which provides that, "* * * * * * nor shall any unequaled discrimination be made in taxing different kinds of property, but all the property subject to the taxation shall be taxed in proportion to its value."

Substantially the same rule in spirit is in article one, section eight of the Federal Constitution which provides that, "All duties, imposts, and excises shall be uniform throughout the United States." This means, of course that they shall be the same throughout the United States.

Miller on the Constitution, page 239.

This section of the United States Constitution we believe is the source of the words so common in the taxation statutes of most of the states, "equal and uniform taxation." See also in U. S. R. S. sections 1924, 1925, 1977. Certainly the spirit is the same in each.

The act of the Oklahoma legislature of 1899 clearly intends the exact reverse of these acts of congress, and the decisions announced by this court. The territorial act is:

"Section 1. That from and after the passage and approval of this act no taxes shall be assessed, levied or

collected in any unorganized county, district or reservation which shall be, or which may hereafter be attached to any county for judicial purposes except taxes for the territorial and court funds."

By this act as is shown by the bill, attempt is made to have the people and property in the counties in Oklahoma pay taxes on seventeen funds, while the people and property in the reservations attached to the counties for judicial purposes only pay taxes on nine funds, and are exempted from payment of eight funds. The reservations attached for judicial purposes to Noble county are, as shown by the map, divided from it only by an imaginary line. The advantages of county government to the people in the reservation, have been referred to in this court in the Gay and Wagoner cases. Under this act of the legislature, the people and the property in the reservation, which get just as much benefit as the people and property in the county, from the salary fund, the poor and insane fund, the contingent fund, the supply fund and the sinking fund, and should have, if they do not have, the same benefit from the county school, and the road and bridge funds, do not have to contribute one iota to those funds.

In the course of his duty, the sheriff of the county has to go into the reservations to preserve peace and order, make arrests and serve subpenaes and warrants just as he does in the counties. The treasurer of the county must keep his office open, receive the taxes, issue receipts and do all other things for the people in the reservations as fully as he does for the people in the country proper. The probate judge must hold his office open for business from the reservation as much as for

business for the county, and administer the estates from the reservation exactly in the same way as the estates from the county. The register must keep his office open and have his records full and complete and ready for inspection for the benefit of the people in the reservation and the property in the reservation equally with those from the county. It is a matter of common knowledge that while the real estate transfers are much larger from the counties than from the reservations, yet the personal property mortgaged or transferred by bill of sale and recorded in the register's office, from the reservations, is vastly larger than that from the county. This is true not only of Noble county but every county in the Territory having reservations attached, and it is well known to every person who is well informed on this subject.

The poor and insane from the reservations have the same county rights as the people in the county, and the insane from the reservations go to the territorial asylum at the expense of the county. The contingent expense of the county must be borne for the benefit of the people in the reservation attached to the county as much as for the benefit of the people in the county. The supply fund must furnish supplies for the existence of the county, and for the benefit of the people in one locality as much as for the benefit of people in the other. The county records, furniture and stationery must be bought, fuel for the county officers, the services of clerks, janitors and the like must be supplied, and are as valuable to a person in the reservation as to a person in the county. Yet under this law, these expenses are to be borne wholly by the people of the county, and the people of the reservation

share the benefits without any expense to them whatever.

The county coroner must hold inquests in the reservations the same as in the county, and the expenses of inquest and burial of persons found dead there must be borne by the county alone.

This result is unjust, and the taxation by which it is reached is not equal and is not uniform. The question comes up naturally, when is taxation uniform and when is it not uniform? The answer is clear that taxation must be equal and uniform upon any particular class of property throughout the whole taxing district.

It is entirely possible that one kind of property, such as railroad property, may be taxed at a different rate under some laws from bank property or farm property, (although that has not been consented to by many of the courts), but in no case has any court held that taxation is equal and uniform upon the same kind of property where it is assessed at one rate in one part of a taxing district and at a different rate in another part of the same taxing district. On the contrary, every court has declared that such a difference is unequal, and that the statutes or any order of commissioners providing for it is not uniform and is illegal.

"Uniformity in taxing implies equality in the burden of taxation. * * * * * * *

"The uniformity must be co-extensive with the territory to which it applies. If a state tax it must be uniform over all the state, if county, town or city tax it must be uniform throughout the extent of the territory to which it is applicable. But the uniformity in the rule required by the Constitution does not stop here. It must be extended to all property subject to taxation, so that all prop-

erty may be taxed alike, equally, which is taxing by a uniform rule."

Gilman v. City of Sheboygan, 2 Black, 517.

"All kinds of property must be taxed uniformly or not at all, and equally throughout the jurisdiction."

Pine Grove Township v. Talcott, 19 Wall 666, 675.

I Desty, Taxation, p. 175-176.

"The county cannot be divided into taxing districts and the property therein be assessed differently upon county expenses."

Hutchinson v. Ozark Land Co., 38 Am. State Rep. 258.

Mauldin v. City Council, 46 Am. State Rep. 723.

Reelfoot Lake Levee Co. v. Dawson, 36 S. W. Rep. 1041.

Jones v. Memphis, 47 S. W. Rep. 138.

What is that lack of uniformity?

Janesville included some farming lands within its limits. A tax on these lands at half the rate of the city real estate was held illegal.

Knowlton v. Supervisors, 9 Wis., 378.

So in a hotel erection case.

Weeks v. Milwaukee, 10 Wis., 242.

So in case of a tax on realty only, to help build a railroad, "Property must be wholly exempt or not exempted at all."

Gilman v. Sheboygan, 2 Black, 516-518.

Zanesville v. Muskigum County, 5 Ohio, St. 589.

Fields v. Highland County, 36 Ohio, St. 476.

It precludes any exemption of private property where tax is laid for general or local purposes.

People v. McCreery, 34 Cal., 432.

People v. Eddy, 43 Cal., 331; 13 Am. Rep. 143.

"The legislature has no power to exempt property from one tax, or from taxation for one purpose and hold it liable to taxation for other purposes * * without violating the rule of uniformity. * * *"

Hale v. City of Kenosha, 29 Wis., 605.

"An act that certain territory annexed to the city of Memphis should be exempt from certain of the city taxes whose benefits did not reach that tract is illegal under a constitutional requirement that the taxes shall be uniform and equal throughout the city, county and state."

"Taxes must always be uniform and equal throughout the same jurisdiction. State taxes must be equal and uniform throughout the state; county taxes must be equal and uniform throughout the county; city taxes must be equal and uniform throughout the city."

Jones v. City of Memphis, 1898 (Tenn.) 47 S. W. 138.

A statute for levee purposes taxing all the real estate in a district except the area covered by standing water of Reelfoot Lake, is not equal and uniform and is illegal.

Reelfoot Lake Levee Co. v. Dawson, 36 S. W. 1041 (Tenn. 1898.)

Taxes must be uniform in respect to the persons and property within the jurisdiction of the body imposing the same.

Sleight v. People, 74 Ill. 48.

Taxes for either state or county purposes must be equal and uniform upon all persons and property within the state or county.

Mauldin v. City Council, 46 Am. State Rep, 723.

The rate must apply equally to everyone in each taxing district.

Henderson v. London Ins. Co., 41 Am. State Rep. 410.

The very words of the act of congress of July 30, 1886, (24 Stat. L. 170) forbid the result intended by the statute of 1899.

"An act to prohibit * * local or special laws. * * "For the assessment and collection of taxes for * * county * * * or road purpose."

Certainly a rule which requires the assessment of one county fund throughout the county but restricts the assessment of the other county funds to a part of the county is local and special as to the "assessment * * of taxes for * * county * * purposes *."

It certainly provides that property in certain localities shall be taxed differently from like property in other localities of the same taxing district.

The territorial statute therefore conflicts with these acts of congress and is void.

II.

The Ponca and Otoe and Missouri reservations having been attached to Noble county for judicial purposes long before the act of 1899 was passed, the act of 1899 did not apply to those reservations.

The act on its face is an act to exempt property in certain localities from part of the tax it would otherwise be liable for.

The rules as to such statutes are settled.

"Exemptions from taxation are regarded as in derogation of the sovereign and the common right, and there-

fore not to be extended beyond the exact and express requirements of the language used, construed strictissimi juris.

Vicksburg Ry. Co. v. Dennis, 116 U. S. 668.

Yazoo Ry. v. Thomas, 132 U. S. 174.

Norfolk Ry. v. Pendleton, 156 U. S. 673.

Keokuk Ry. v. Mo., 152 U. S. 301.

W. E. W. Ry. v. Alsbrook, 146 U. S. 294.

Sutherland Stat. Const., Sec., 364.

The burden of establishing the exemption is upon the party claiming it.

25 Enc. Law, page 159.

Boston Society v. Boston, 129 Mass., 178.

In re Swigert, 119 Ill., 83; 59 American Reports, 791.

Medical Society v. Neff, 53 N. Y., Supp. 1077.

Every presumption is against the exemption, and proof of the intent to exempt must be beyond a reasonable doubt.

25 Enc. of Law, pages 157, 158.

Exemption from taxation cannot be implied from the apparent spirit or purpose of the statute.

3 L. R. A. 206, last paragraph of foot note.

On the contrary, an exemption from taxation must be in express terms too plain to be mistaken; not by construction; and every doubt, if any exists, must be resolved against the exemption.

Ohio Life Co. v. Debolt, 16 How. 435-6.

Chicago Ry. v. Gaffey, 120 U. S. 575.

Let us now read the statute of 1899. (Oklahoma Session Laws 1899, p. 218.)

"Section 1. That from and after the passage and approval of this act no taxes shall be assessed, levied or collected in any * * reservation which shall be or which may hereafter be attached to any county for judicial purposes, except taxes for the Territorial and Court funds."

Upon its face, by its terms, this statute is wholly in the future; the reservations described are those which "shall be or which may hereafter be attached to any county."

It does not describe reservations which have heretofore been or now are attached to a county.

Appellees ask that the court will so construe the statute, and read into it such additional words, as will make the statute cover reservations which then were attached to a county.

But this statute upon its face is clear in its meaning Nothing is ambiguous. Where the language is clear it does not admit of construction.

Lake County v. Rollin, 130 U. S., p. 662.

Yerkes v. U. S., 173 U. S., p. 439.

A statute is always held to be prospective in its operation unless the language is express to the contrary or there is a necessary implication to that effect.

Harvey v. Tyler, 2 Wall., 346-347.

People v. McCall, 94 N. Y., 589.

People v. O'Brien, 111 N. Y., 60.

The spirit of a statute is to be collected from the letter of the statute, not inferred from extrinsic circumstances.

Potter's Dwarris Stat. Const. pp. 182, 183.

Brewer v. Blougher, 14 Peters, 178.

Story Conflict Laws, Int. Remarks, p. 10.

"The rule by which we are to be guided is to look at the precise words and to construe them in their ordinary sense, unless it would lead to absurdity or manifest injustice."

Chew Heong, 112 U. S., p. 555.

"When the language of the statute is clear it is no for a court to make it embrace cases not described, because no reason is seen why they were not included."

Scott v. Reid, 10 Peters 524, 526, 527.

This is a leading case upon this point and has been followed always, 130 U. S., 670; 157 U. S., 37; 8 L. R. A., 260; 87 F. R., 665; 128 Mass., 231; 64 Wis., 110.

"The first resort is in all cases to the natural significations of the words employed, in the order and grammatical arrangement in which the framers of the instrument have placed them. If * * * the words embody a definite meaning, which involves no absurdity and no contradiction between different parts of the same writing, then the meaning apparent upon the face of the instrument is the one which alone we are at liberty to say was intended to be conveyed; in such a case there is no room for construction * * *."

"That which the words declare is the meaning of the instrument; and neither courts nor legislatures have the right to add to or take from that meaning."

Newell v. People, 7 N. Y., 97.

People v. Rathbone, 145 N. Y., 430, 440.

The language of the statute certainly does not include reservations which had been attached to counties; and so does not apply to the Ponca, Otoe and Missouri reservations.

The language must be construed out of its order and grammatical arrangement if it is to be held to include these reservations.

This the decisions of this and every court forbids.

For these reasons we think the decision of the Supreme Court of Oklahoma should be reversed.

Many objections to the procedure by the county officers were made in the petition and argued in the District and Supreme Courts, but the decision in the latter court was based upon the theory that the act of 1899 was valid, and the acts of the officers valid as to the taxation for Territory and Court funds.

The only questions in this case therefore are whether the act of 1899 is valid and whether it applies to reservations already attached to counties when the act was passed. We think each must be answered in the negative.

Respectfully submitted,

HORACE SPEED,

Attorney for Appellants.

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No. 173.

Br. of Speed, Hughes & Harr for Appellants. (on mo.)

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JAMES H. McKENNEY

Supreme Court of the United States.

October Term, 1902.

Filed Nov. 13, 1902.

GEORGE A. FOSTER, Sheriff of Noble County, Oklahoma Territory, and G. T. BRYAN, Treasurer of Noble County, Oklahoma Territory, *Appellants*,

vs.

I. T. PRYOR, I. T. PRYOR & Co., a partnership composed of I. T. Pryor, J. H. Morris and Howard Ross; C. A. Keeran, et al.

No. 173.

Appeal from the Supreme Court of the Territory of Oklahoma.

BRIEF IN OPPOSITION TO MOTION TO DISMISS.

HORACE SPEED,
WM. J. HUGHES,
WM. R. HARR,
Counsel for Appellants.

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No. 173.

Appeal from the Supreme Court of the Territory of Oklahoma.

BRIEF IN OPPOSITION TO MOTION TO DISMISS.

STATEMENT.

This suit was brought in the District Court of Noble County, Oklahoma Territory, by a number of individuals, firms and corporations, appellees here, against the sheriff and treasurer of that county, appellants here, to enjoin the collection of certain taxes levied against the cattle and other personal property of the plaintiffs for the year 1899, which property during that year was located on the Ponca and Otoe Indian reservations, attached to Noble County for judicial purposes.

Defendants demurred to the petition of plaintiffs, and the demurrer was sustained. Upon appeal, the Supreme

Court of Oklahoma reversed the judgment of the District Court, and directed that the injunction issue as prayed. From that judgment the defendants have appealed to this court.

QUESTION.

By an act of the Legislature of Oklahoma, passed March 5, 1895, (Laws Okla. 1895, art. 6, ch. 43,) it was provided that—

> when any cattle are kept or grazed, or any other personal property is situated in any unorganized country, district or reservation of this Territory, then such property shall be subject to taxation in the organized county to which said country, district or reservation is attached for judicial purposes.

The validity of this act was affirmed by this court in the cases of *Gay* v. *Thomas*, (169 U. S. 264,) and *Wagoner* v. *Evans*, (170 U. S. 588.)

Since that time and on March 10, 1899, (Laws Okla. 1899, p. 216,) the Legislature of Oklahoma passed the following act:

> That from and after the passage and approval of this act, no taxes shall be assessed, levied or collected in any organized country, district or reservation which shall be or which may hereafter be attached to any county for judicial purposes, except taxes for Territorial and county funds.

In imposing the taxes sought to be restrained the county officers ignored this later statute, believing the exemptions made thereby to be unlawful, and proceeded under the act of 1895. The Supreme Court of Oklahoma held, however, that the Legislature was authorized by the organic law of the Territory to pass the act of 1899. The correctness of this decision, and, if it be correct, the validity of the organic law of the Territory in that respect under the Constitution of the United States, are, therefore, the questions presented on this appeal.

I.

The first ground of the motion to dismiss—a failure to comply with rule 9 of this court—is frivolous. That rule requires the docketing of the case on or before the return day. The appeal was allowed on September 21, 1901 (Rec. 59); the citation was signed on September 28 and served on September 30 (Rec. 2), and the case was docketed in this court on October 11, within the thirty days required by the citation and by the rule.

II.

The value of the matter here in dispute exceeds the jurisdictional amount.

The judgment of the Supreme Court of Oklahoma in the present case provides:

> It is therefore ordered and adjudged by the court that the judgment of the trial court in this cause be and the same is hereby reversed; and that said cause be remanded to the lower court with instructions to enter judgment *perpetually enjoining the collection of the taxes in controversy herein*, except the taxes for Territorial and court funds, upon payment by the respective appellants of the whole amount of said taxes and penalties, if any, accrued prior to the bringing of the suits herein into court, or the payment of such taxes to the treasurer of Noble County, such payment to be evidenced to the court by the treasurer's receipt therefor. The costs of this case to be taxed to the county of Noble.

This judgment, it will be perceived, not only restrains the collection of the taxes in question for the year in question, but "perpetually." It therefore determines the *legal right* of the defendants, for all time, to collect such taxes. As to the defendants, then, that right is the matter in dispute, and its value unquestionably exceeds the jurisdictional amount. As shown by the record (page 11) the tax levy for the year 1889 against the

plaintiffs alone, after deducting the court and Territorial taxes, which were paid, is over $9,000.

The case, in this respect, comes within the rule announced in *Market Company* v. *Hoffman*, (101 U. S. 112, 113.)

Hoffman had brought a bill to enjoin the market company from proceeding to sell a stall occupied by him, and for a decree establishing his right to retain possession of the stall so long as he chose to occupy it for his business as a butcher. Subsequently the bill was amended by consent, and two hundred and five occupants of other stalls were made complainants with him. The final decree of the court enjoined the sale of the stalls of the complainants, or any of them, and also adjudged that their rights therein did not expire within a certain period. Upon appeal by the company, this court said:

> The first question to be determined is whether the amount in controversy is sufficient to give us jurisdiction of the appeal. Upon this we have no doubt. While it may be true that if Hoffman was the sole complainant, the amount in controversy would be insufficient to justify an appeal either by him or the company, the case is one of two hundred and six complainants suing jointly, *the decree is a single one* in favor of them all, *and in denial of the right claimed by the company*, which is of far greater value than the sum which, by the act of Congress, is the limit below which an appeal is not allowable. It is averred under oath in the pleadings that the sale which the company proposed to make, and the court below enjoined, would have realized to the company more than $60,000. Of this benefit the decree deprives them. It is very plain, therefore, that the appeal is one within our jurisdiction.

In this case, also, the decree is a single one in favor of all the plaintiffs, and in denial of the right claimed by the defendants to collect the taxes in question, which right, as has been shown, is of greater value than is required to give this court jurisdiction.

In the prior cases of *Gay* v. *Thomas*, (169 U. S. 264,) and *Wagoner* v. *Evans*, (170 U. S. 588,) which involved the validity of the act of the Legislature of Oklahoma of March 5, 1895, first imposing taxes on cattle and other personal property in Indian reservations attached to organized counties for judicial purposes, the jurisdiction of this court appears not to have been questioned. The *Gay* case (as appears from the record therein) was precisely like the present one, in that it was a suit by a number of individual plaintiffs, whose respective interests, as determined by the amount of taxes assessed against them individually, were below the amount required to give this court jurisdiction, but collectively aggregated more than the necessary amount. There is some ground to assume that the aggregate amount of the taxes sought to be restrained was considered the sum or value in dispute, as in stating that case the court said:

> The county clerk of said county of Kay carried the valuation of the property of these plaintiffs in error upon the tax rolls of said county, and against the same extended the levies as aforesaid, and charged against the property of these plaintiffs in error in the aggregate the sum of $26,174.16.

III.

No jurisdictional amount is, however, required, as the case involves the validity of an authority exercised under the United States.

The act of March 3, 1885, (23 Stat. 443, c. 355,) regulating appeals from the Supreme Courts of the Territories to this court, provides that an appeal or writ of error may be brought in any case, without regard to the sum or value in dispute, "in which is drawn in question the validity of . . . an authority exercised under the United States."

The question in this case is the validity, under its organic law and the Constitution of the United States, of

the act of the Oklahoma Legislature of March 10, 1899, relating to the taxation of cattle and other personal property in Indian reservations attached to organized counties for judicial purposes. It is therefore a case which involves "the validity of an authority exercised under the United States." Upon that point the decisions of this court are conclusive.

In *Clayton* v. *Utah*, (132 U. S. 632, 638,) there was involved the title to an office, one party claiming under an act of the Territorial Legislature, and the other under appointment by the Governor acting under authority conferred by the organic act of the Territory. The jurisdiction was sustained, the court, by Mr. Justice Miller, saying:

> We are therefore very clear that as the Supreme Court of the Territory of Utah based its decision upon the power conferred upon the Governor by the seventh section of the organic act of Utah to make appointments to office, this power was drawn in question, and gives the defendant Clayton a right to have the judgment of this court upon it.

In *Linford* v. *Ellison*, (155 U. S. 503, 508,) which was an appeal from a decision of the Supreme Court of the Territory of Utah, holding that a municipal corporation had no authority, under its charter, to levy a certain tax, the jurisdiction was denied, on the ground that the case did not involve the *validity*, but simply the *construction* of an act of the Territorial Legislature, Mr. Chief Justice Fuller observing:

> It is thus seen that the decision of the Supreme Court of the Territory involved the *construction* of the organic law and the scope of the authority to legislate conferred upon the Territorial Legislature; but that the *validity* of that authority and of the statute was not drawn in the question.

There can be no question, in the case at bar, that the validity, and not simply the construction, of the act of March 10, 1899, is involved.

Maricopa, &c. Railroad Co. Territory of Arizona, (156 U. S. 347, 350,) is in point. That was a proceeding under a Territorial statute to collect taxes levied by a statutory authority, but claimed to be in violation of the organic act of the Territory. Sustaining the jurisdiction, the court, by Mr. Justice White, said:

> It is insisted that the Territory *is without authority under its organic act* to extend its taxing power beyond its limits and over a reservation created by act of Congress, and that it has undertaken to do so, either directly or by including the value of the property within the reservation in its general estimate of the amount for which the company ought to be assessed. This claim, we think, presents a question within our appellate jurisdiction.

This is precisely the contention in this case—that the legislature of Oklahoma was without authority, under its organic act, to legislate in a certain direction.

IV.

The decision of the Supreme Court of Oklahoma also raises the question of the validity of the organic act of the Territory.

A further ground of jurisdiction in this case is presented by the decision of the Supreme Court of Oklahoma, holding that the Legislature of that Territory is not required by its organic law to observe the rule of uniformity in taxation, prescribed by the Constitution of the United States. (Art. I, sec. 8, cl. 1.) This raises the question of the validity, in that respect, of the act of Congress organizing the Territory.

In *Springville City* v. *Thomas,* (166 U. S. 707, 708,) there was involved the validity of a verdict of nine jurors under authority of a Territorial statute which was claimed to be in contravention of the Seventh Amendment to the Federal Constitution. In sustaining the jurisdiction the court, by Mr Chief Justice Fuller, said:

The Supreme Court of the Territory held in *Hess v. White*, 9 Utah, 61, (and the decision was followed in these cases,) that the act of Congress of September 9, 1850, (9 Stat. 453, c. 51, sec. 6,) the organic act of the Territory, vested in the Territorial Legislature such unlimited legislative power as enabled it to provide that unanimity of action on the part of jurors in civil cases was not necessary to a valid verdict. But defendants contended that the act of Congress as thus interpreted was in violation of the Seventh Amendment, and the validity of the act was in that way drawn in question. In the view which the Supreme Court took of the act it was obliged to subject it to the test of the Constitution, and accordingly in deciding that the Seventh Amendment did not require unanimity of action, the court held in effect that the act of Congress was constitutional, although it empowered the Territorial Legislature to provide for verdicts by less than the whole number of jurors. The question involved was not matter of construction of the Territorial act, but the court discussed its validity, and this depended on the validity of the act of Congress giving it the scope which the court attributed to it.

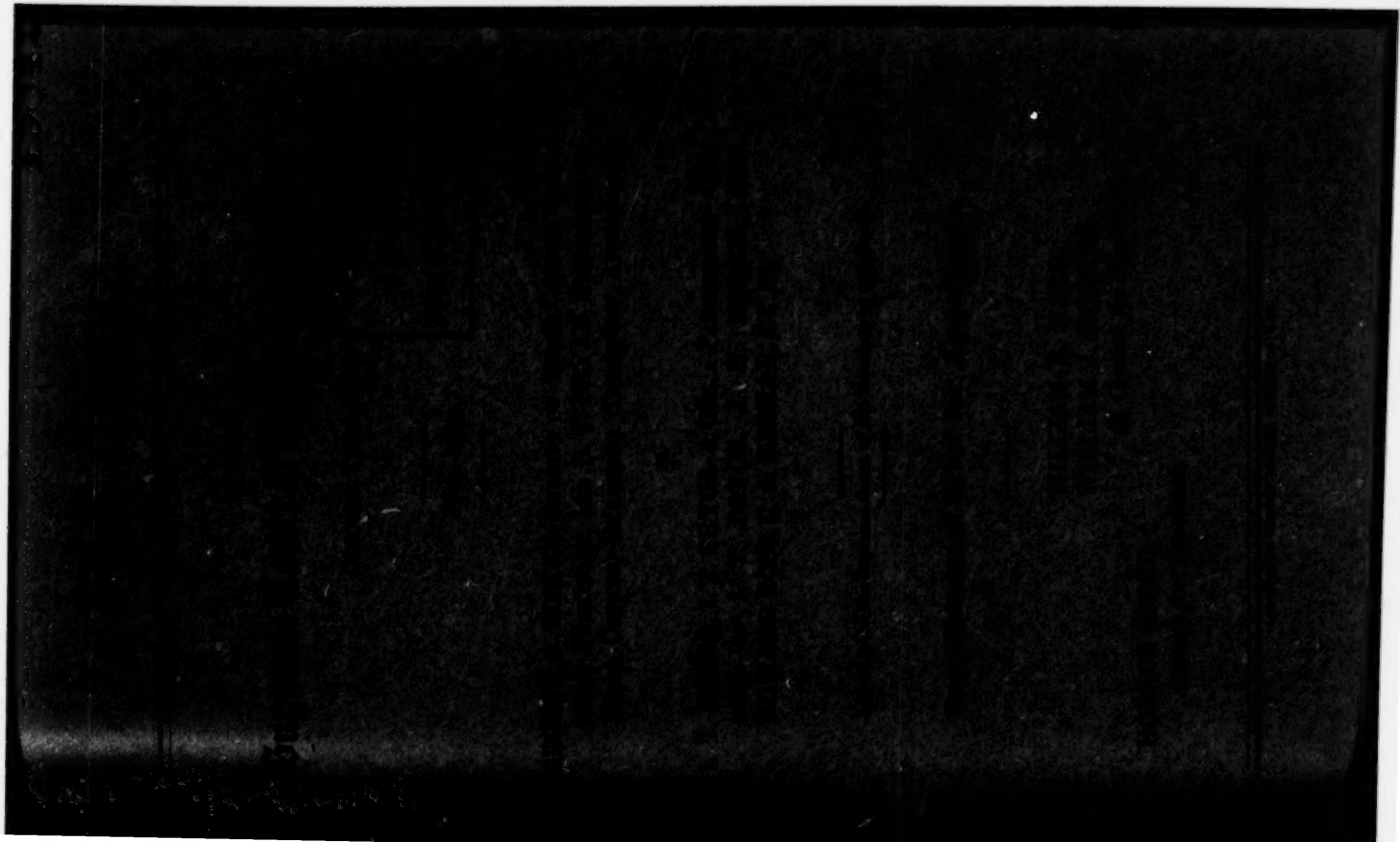
To the same effect is *Capital Traction Co.* v. *Hof*, (174 U. S. 1, 4.)

V.

To pass upon the questions presented by the motion to dismiss would require an examination of the entire record. As the case will be reached for hearing on the merits in its regular course during the term, it is submitted that the court will not make such an examination on a motion to dismiss at this late day. To do so will entail additional and unnecessary labor upon the court.

For the above reasons the motion should be denied.

HORACE SPEED,
WM. J. HUGHES,
WM. R. HARR,
Counsel for Appellants.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 173.

GEORGE A. FOSTER, SHERIFF OF NOBLE COUNTY, OKLAHOMA TERRITORY, AND G. T. BRYAN, TREASURER OF NOBLE COUNTY, OKLAHOMA TERRITORY, APPELLANTS,

vs.

I. T. PRYOR, I. T. PRYOR & CO., A PARTNERSHIP COMPOSED OF I. T. PRYOR, J. H. MORRIS, AND HOWARD ROSS, C. A. KEERAN, ET AL.

Appeal from the Supreme Court of the Territory of Oklahoma.

Supplemental Brief for Appellants.

STATEMENT.

The Territory of Oklahoma embraces within its boundaries, as fixed by the act of Congress providing for its organization (act of May 2, 1890, ch. 182, 26 stat. 81), certain Indian reservations; but these reservations are not included within any of the organized counties of the Territory.

The organic act provided that the Territory should be

divided into three judicial districts, to be defined by the Supreme Court; and that the territory not embraced in organized counties should be attached, for judicial purposes, to such organized county or counties as that court should determine (sec. 9).

On March 5, 1895 (Sess. Laws, Okla. 1895, p. 232), the legislature of Oklahoma amended section 13, article 2, chapter 70, of the statutes relating to revenue, so as to make that section read:

> That when any cattle are kept or grazed, or any other personal property is situated in any unorganized country, district or reservation of this Territory, then such property shall be subject to taxation in the organized county to which said country, district or reservation is attached for judicial purposes.

The act of 1895 further provided that the Board of County Commissioners of the organized county should appoint a special assessor for the unorganized country, district or reservation attached thereto, and conferred upon him all the powers and duties of a township assessor. The officer whose duty it was to collect taxes in the organized county was also authorized to collect the taxes in the unorganized country, district, or reservation.

The validity of the act of 1895 was affirmed by this court in *Thomas* v. *Gay*, 169 U. S. 264, and *Wagoner* v. *Evans*, 170 U. S. 588.

In 1897 the system of township assessors, and with it the special assessor for the unorganized country, district, or reservation, was superseded, and one assessor for each county was provided whose jurisdiction was held to include such unorganized territory.

On March 10, 1899, the legislature of Oklahoma passed the act here in question (Laws Okla. 1899, chap. 28, art. 2, p. 218), which provided—

> That from and after the passage and approval of this act, no taxes shall be assessed, levied or collected

in any unorganized country, district, or reservation which shall be or which may hereafter be attached to any county for judicial purposes, except taxes for the territorial and court funds.

In assessing cattle and other personal property in the Ponca and Otoe Indian reservations for the year 1899 the county assessor of Noble County, to which those reservations had been attached for judicial purposes, ignored this latter act, believing the exemptions made thereby to be illegal, and assessed such property for all county and territorial purposes.

The various funds for which taxes were so assessed for 1899, and the rates of taxation, were as follows:

	Mills.
Territorial	5.2
Court	3.0
Salary	6.0
Road and bridge	2 0
Sinking fund	4.0
Poor and insane	1.0
Supplies	2.0
County school	2.0
Contingent	1.0
Total	26.2

The appellees brought suit in the district court of Noble County to restrain the appellants, the treasurer and sheriff of Noble County, from attempting to enforce and collect the taxes so assessed.

A temporary injunction was granted, conditioned upon the payment of the taxes for the court and territorial funds. A demurrer to the petition was interposed, and upon the hearing of the case the demurrer was sustained. A stay of execution was granted, however, pending a determination of an appeal taken by the plaintiffs to the Supreme Court of Oklahoma.

The Supreme Court of Oklahoma reversed the judgment of the district court and remanded the case to that court

with directions to enter a judgment perpetually enjoining the collection of the taxes for other than the Territorial and court funds. From that judgment the sheriff and treasurer of Noble County have appealed to this court.

ARGUMENT.

I. The Ponca and Otoe Indian Reservations Are a Part of Noble County Taxing District.

The necessary effect of the act of 1895 in making cattle and other personal property in any unorganized country, district or reservation *subject to taxation* in the organized county to which it was attached for judicial purposes, was to make such unorganized territory a part of the county taxing district. The order of the Supreme Court attaching any such territory to a county for judicial purposes made it a part of the same judicial district; the act of the legislature placing it under the general taxing jurisdiction of the county made it a part of the same taxing district. It was afterwards so treated, and the same taxes collected there as in the county proper. Of course, as the legislature does not exercise an arbitrary authority in the creation of taxing districts, this could only be done upon the theory that persons or property in the unorganized territory so attached received an equality, or a practical equality, of benefit with persons or property in the county from the taxes imposed. This was held to be the fact by this court in *Thomas* v. *Gay* and *Wagoner* v. *Evans*, above cited.

Upon the point under discussion the Supreme Court of Oklahoma said (Rec., pp. 42–43):

> The question now presented is, has the territorial legislature the power to tax the property in these reservations for territorial and court funds and not for other county purposes? The plaintiffs in error insist that the Ponca and Otoe Indian reservations, although attached to Noble County for taxing pur-

poses, form a separate taxing district, and therefore the rule of uniformity throughout the taxing district does not apply. Without determining at this time as to whether under our organic law the legislature must adopt a uniform rule for taxing all property within the taxing district, we will consider briefly the effect of attaching these reservations to Noble County for taxing purposes. When the law of 1895 was first enacted we were under the system of township assessors; therefore the legislature provided that the county commissioners of the county to which any Indian reservation was attached for taxing purposes should appoint a special assessor each year, whose duty it should be to assess the property in such reservation, and that such special assessor should have all of the powers and should be required to perform all the duties of a township assessor, and that he should give a similar bond and take the same oath as required of such township assessors, and receive the same fees. And by this same section it was provided that the officer whose duty it was to collect the taxes in the organized county to which such country, district or reservation was so attached, should collect such taxes, and was vested with all powers which he might exercise in the organized county, and his official bond by the act was made to cover all such taxes which might come into his possession. From the provisions of the act of 1895, it will be seen that *the legislature treated these reservations as it did the townships in the same county*, and they were under the same rule; and while they were not, in fact, a part of Noble County, that is, the county lines were not extended around them, *still they were attached to Noble County, and became a part of the same taxing district*; and the legislature provided for the appointment of a special assessor each year for these reservations so that they might, as nearly as possible, be placed under the same system as the townships; and when the legislature, in 1897, did away with township assessors, and provided one assessor for each county, the act repealed the other statute regarding special assessors for these reservations, and the county assessors in the counties to

> which the different reservations were attached for taxing purposes were thereby empowered to assess all of the property in their respective counties, and this power was not necessarily limited to the territory within the county lines, for the law which directs the county assessor to assess the property in his county, means also that he shall assess the property in the Indian reservation attached to his county for taxing purposes; *and while such reservations may, in fact, be clear outside of the lines of the county, it is by law placed under the same jurisdiction, and subject to the same rules.* Once a reservation is attached to a county for taxing purposes, it thereby becomes a part of the county taxing district to which it is attached. *Gay* v. *Thomas*, 169 U. S., 277, and *Russell* v. *Green* (Okla.), not officially reported, 62 Pac., 817. It therefore necessarily follows that, *if the law in question is to be upheld, it must be upon some theory other than that the Ponca and Otoe Indian reservations form a separate taxing district.*

Russell v. *Green*, 10 Okla. 340 (1900), referred to by the Supreme Court of Oklahoma, was an action to enjoin the collection of taxes levied on cattle in the Osage Indian Reservation, between March 1 and September 1, 1898. The court there said (pp. 341-2):

> It is insisted by plaintiffs in error that the transient property act of 1895 only provides for taxing property which is brought into a *county* of the Territory between March 1 and September 1, and has no reference to property brought into an Indian reservation which is no part of an organized county, and that the Osage Indian Reservation is not a part of Pawnee County. There is nothing in this contention. The Osage Indian Reservation was attached to Pawnee County for judicial and taxing purposes prior to 1898, and *for these purposes it was, in effect, a part of Pawnee County*, and property brought into that reservation during 1898 was brought into Pawnee County, within the meaning of the transient property act.

The opinion of this court in *Thomas* v. *Gay* is to the same effect. In that case the court, speaking by Mr. Justice Shiras, said (169 U. S., pp. 277–8):

> The specific objection made to the validity of these taxes as imposed on personal property located in unorganized countries or in the reservations does not seem to us to be well founded. We have already cited the cases of *Utah and Northern Railway Company* v. *Fisher*, 116 U. S. 28, and *Maricopa and Phœnix Railroad* v. *Arizona*, 156 U. S. 347, wherein territorial tax laws were held to have a valid operation over property lying within Indian reservations.
>
> *Union Pac. Railway Co.* v. *Peniston*, 18 Wall. 5, 37, was a case where unorganized country was attached by law to an organized county for *judicial* and *revenue* purposes, and the law was sustained, as appears in the decision delivered by Mr. Justice Strong, as follows:
>
> "It remains only to notice one other position taken by the complainants. It is that if the act of the State under which the tax was laid be constitutional in its application to their property within Lincoln County, the property outside of Lincoln County is not lawfully taxable by the authorities of that county under the laws of the State. To this we are unable to give our assent. By the statutes of Nebraska the unorganized territory west of Lincoln County, and the unorganized country of Cheyenne, are attached to the county of Lincoln for judicial and revenue purposes. *The authorities of that county, therefore, were the proper authorities to levy the tax upon the property thus placed under their charge for revenue purposes.*"
>
> In *Llano Cattle Co.* v. *Faught*, 5 S. W. Rep. 494 (Texas), the case was that an unorganized country was attached by law to the organized county of Scurry for judicial purposes. The officers of Scurry County assessed and levied county taxes upon the cattle of the plaintiff, a foreign corporation, kept in the unorganized country, and it was held that *the unorganized country, being in effect a part of the county to which it was so attached*, the collection of taxes on such personalty of a non-resident may be collected by the tax collector of the latter county. We are

referred to similar decisions in Kansas: *Philpin* v. *McCarty*, 24 Kansas, 393; in Ohio, *Kemper* v. *McClelland*, 19 Ohio, 308; in Iowa, *Hilliard* v. *Griffin*, 33 N. W. Rep. 156; in Michigan, *Comins* v. *Township of Harrisville*, 45 Michigan, 442.

It is to be observed that in *Thomas* v. *Gay* the argument against the validity of the act of 1895 proceeded upon the theory that that act made the unorganized territory referred to a part of the county taxing district, and it was claimed that, as the owners of property in such unorganized country did not receive the same measure of benefit from the taxes authorized to be imposed as property owners in the county, and as under the act personal property only was to be taxed, the statute violated the fundamental rules of equality and uniformity.

The act of March 10, 1899, does not create a new taxing district. On the contrary, it proceeds upon the theory that such unorganized country referred to is a part of the county taxing district. It provides that thereafter no taxes shall be assessed, levied or collected in the unorganized country, except for the court and territorial funds. Assessed, levied and collected by whom? Necessarily by the officers of the county, as that act provides no machinery for such purposes.

The act of 1899 imposes no taxes, and there is nothing in it which indicates an intention to create a new taxing district. It simply exempts property in the unorganized country referred to from the payment of certain taxes, and *exemptions from taxation can only be made upon the theory that the property exempted is within an established taxing district.*

But the act of 1899 does not exempt property in the unorganized country referred to from the payment of all county taxes. The court tax authorized by that act is for county and not territorial purposes. That tax is determined by the board of county commissioners to which such unorganized country is attached, and the fund derived therefrom is used for the payment of the judicial expenses of the county.

The territorial tax is exclusively for territorial purposes, and is fixed by the territorial board of equalization, which consists of the governor, the auditor, and the secretary of the Territory. (Laws Okla., 1895, pp. 215, 216, 217; id. 1897, p. 256.)

If, then, this unorganized country be not a part of the county taxing district, but constitutes a separate taxing district, upon what authority is the court tax for county expenses imposed? If it be a part of the county taxing district, and the property therein be not wholly exempt, then, under well-settled principles, it must be taxed for all purposes.

The judgment of the Supreme Court of Oklahoma that the effect of the act of 1895 was to make the unorganized territory referred to a part of the county taxing district should, in any event, be accepted by this court. The rule in regard to the decisions of the highest court of a State as to the meaning and effect of its legislative enactments is well settled. In *Elmendorf* v. *Taylor*, 10 Wheat. 152, Chief Justice Marshall thus expressed it (p. 159):

> This court has uniformly professed its disposition, in cases depending on the laws of a particular State, to adopt the construction which the courts of the State have given to those laws. This course is founded on the principle, supposed to be universally recognized, that *the judicial department of every government*, where such department exists, *is the appropriate organ for construing the legislative acts of that government*. Thus, no court in the universe, which professed to be governed by principle, would, we presume, undertake to say that the courts of Great Britain, or of France, or of any other nation, had misunderstood their own statutes, and therefore erect itself into a tribunal which should correct such misunderstanding. We receive the construction given by the courts of the nation as the true sense of the law, and feel ourselves no more at liberty to depart from that construction than to depart from the words of the statute. On this principle the construction given by this court to the Constitution and laws of the

> United States is received by all as the true construction; and on the same principle the construction given by the courts of the several States to the legislative acts of those States is received as true, unless they come in conflict with the Constitution, laws, or treaties of the United States.

A like rule, it is submitted, should apply in the case of the decisions of the supreme court of a Territory. It is the policy of the United States to allow organized Territories as much independence as possible in the administration of their local affairs. Though subject to the controlling power of the General Government, that power is and ought to be sparingly exercised. Certainly the judicial department of a Territory, equally with the judicial department of a State, is "the proper organ for construing the legislative acts of that government," which possesses only a local importance or application. And if such construction does not conflict with the Constitution, laws, or treaties of the United States, there can be no sound reason for a review thereof by this court.

II. The Act of 1899 Violates the Rule of Uniformity.

This is not disputed by counsel for appellees, who say (brief, p. 39):

> If this country, by virtue of being attached to Noble County, became a part of the county, the act of March 10, 1899, may be invalid for the reason that it does not provide a uniform system of taxes for the whole of the taxing district.

As already indicated, the Supreme Court of Oklahoma held that the Ponca and Otoe Indian reservations were a part of Noble County taxing district. That court also admitted that the act of 1899 violated the rule of uniformity, but sustained the act on the ground that uniformity was

not required by the organic law of the Territory. This latter proposition will be considered hereafter.

1. The requirements of the rule of uniformity were thus stated by Mr. Justice Swayne, in *Township of Pine Grove* v. *Talcott* (19 Wall. 666, 675):

> The 11th clause of the same article [speaking of sec. 11 of art. 14 of the constitution of the State of Michigan] declares that the legislature shall provide a uniform rule of taxation, except as to property paying specific taxes, and that taxes shall be levied upon such property as shall be prescribed by law. The object of this provision was to prevent unjust discriminations. It prevents property from being classified and taxed as classed by different rules. *All kinds of property must be taxed uniformly, or be entirely exempt. The unformity must be coextensive with the territory to which the tax applies.* If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout such county or city.

In *Gilman* v. *Sheboygan*, 2 Black, 510, the court said (p. 517):

> The court [the Supreme Court of Wisconsin] refer with approbation to the *Exchange Bank of Columbus* v. *Hines*, 3 O. S. Rep. 1. In that case the Supreme Court of Ohio say: "Taxing is required to be by a '*uniform rule*,' that is, by one and the same unvarying standard. Taxing by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation, and this equality of burden can not exist without uniformity in the mode of assessment, as well as the rate of taxation. *But this is not all. The uniformity must be coextensive with the territory to which it applies.* If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout the extent of the territory to which it is applicable. But the uniformity in the rule required by the Constitution does

not stop here. It must extend to *all property* subject to taxation, so that all property may be taxed alike—equally—which *is* taxing by a uniform rule."

We forbear to examine the soundness of the conclusions of the Supreme Court of Wisconsin. They need no support at our hands. *We could add nothing to what they have so well and ably said in vindication of their own views.*. Such a discussion would incumber this opinion without throwing any new light upon the subject.

Judge Cooley, in his work on Taxation, says (p. 245):

> The basis of apportionment which is fixed upon by the general rule must be applied throughout the district. *There can not be two rules of apportionment for the same tax in the same district;* if there could be, there might be any number, and in effect there would be none at all, and every man might be assessed arbitrarily (*Tide-Water Co.* v. *Coster*, 18 N. J.. Eq. 518).

Again (p. 169):

> It has already been stated that inequality does not necessarily follow the restricting of a tax to a few subjects, only, or even to a single subject. . . . Let it reach all of a class, either of persons or things, it matters not whether those included in it be one or many, or whether they reside in any particular locality or are scattered all over the State. But when, for any reason, it becomes discriminative between individuals of the class taxed, and selects some for an exceptional burden, the tax is deprived of the necessary element of legal equality, and becomes inadmissible. It is immaterial on what ground the selection is made; *whether it be because of residence in a particular portion of the taxing district*, or because the persons selected have been remiss in meeting a former tax for the same purpose, or because of any other reason, plausible or otherwise; for *if the principle of selection be once admitted, limits can not be set to it*, and it may be made use of for the purposes of oppression, or even of punishment.

Desty on Taxation (vol. 1, p. 176):

> Taxes are equal and uniform "when no person or class of persons in the territory taxed is taxed at a higher rate than are other persons in the same district upon the same value or thing, and when the objects of taxation are the same, by whomsoever owned or whatever they may be."

In *Hutchinson* v. *Ozark Land Company*, 57 Ark. 554, the legislature had divided a county into two judicial districts. Subsequently the county court levied a tax of five mills for general county purposes on all the property in one district, and a tax of only three mills in the other district. The court held that it was not within the power of the legislature to create a district for the levy of a tax for a county purpose which did not embrace the whole county.

In *O'Kane* v. *Treat*, 25 Ill. 458, it was held that when a city was a part of a township the legislature could not exempt its inhabitants from the payment of township taxes for highway purposes. *Fletcher* v. *Oliver*, 25 Ark. 289, is to the same effect.

2. *It is immaterial whether the property exempted is less favorably situated or does not receive the same measure of benefit as other property in the taxing district.*

In *Reelfoot Lake Levee District* v. *Dawson*, 36 S. W. 1041, 1043, the legislature had authorized a tax upon all the lands within a levee district for levee purposes, with the exception of "the area now covered by standing water of Reelfoot Lake." The Supreme Court of Tennessee held that the area being of some value, and not otherwise exempt, the constitutional requirement of uniformity was violated.

In *Jones* v. *Memphis*, 47 S. W. 138, the legislature had annexed certain outlying territory to the city of Memphis and sought to exempt property therein from the payment of certain taxes. But the court said (p. 139):

> This court is of opinion that sections 3 and 4 of

> chapter 6 are clearly unconstitutional and void, inasmuch as they exempt the annexed territory from taxes for fire, light and police protection for 10 years, and for the same time expressly prohibit the district from having the advantages of this protection. This court is of opinion that taxation must always be uniform and equal throughout the extent of the same jurisdiction; that State taxes must be equal and uniform throughout the State; that county taxes must be equal and uniform throughout the county; and that a city tax must be equal and uniform throughout the city, so far as revenues for current expenses or future wants are concerned [citing cases].

Knowlton v. *Supervisors* (9 Wis. 415), is a case in point. The city of Janesville, Wis., by its charter, included a large quantity of farming or agricultural lands. The owners of these lands, conceiving themselves to be greatly and unequally burdened by taxation for the support of the city government, applied to the legislature for relief, and an act was accordingly passed providing that such lands should be taxed at a much less rate than lands within the recorded limits of the city. The act was held to violate the rule of uniformity, the Supreme Court of Wisconsin observing (p. 421):

> It may be as was claimed by counsel that the legislature acted unwisely or perhaps unjustly in including within the territorial limits of the city so much farming or agricultural land, but that is not a matter for judicial correction. Neither is it a matter for them to correct by discrimination in taxation, when the Constitution has declared that there shall be no discrimination. The remedy lies in a repeal or an amendment of the charter.

In *Wilson* v. *Supervisors of Sutter*, 47 Cal., 91, an act of the legislature authorizing a board of county supervisors, "for good cause shown," to remit taxes within a specified levee district, violated the constitutional requirement of uni-

formity. And yet it would have been competent originally to so bound the district as to exclude the part on which it was proposed to remit the tax.

3. *Property must be taxed for all purposes or else wholly exempt. A partial exemption is invalid.*

The act of 1899, it will be remembered, authorizes property in these reservations to be taxed for one county purpose (i. e., the court fund), but exempts it from taxation for all other county purposes.

Gilman v. *Sheboygan*, 2 Black. 510, involved the validity of an act of the legislature of Wisconsin providing that all taxes thereafter levied by the common council of the city of Sheboygan for the payment of any bonds issued by the city to aid in the construction of any railroad, etc., should be levied on the real estate of said city exclusively. *This* court there said (p. 518):

> The bill avers that at the time the tax complained of was levied there was personal property in the city of the value of from $300,000 to $400,000 liable to taxation. The demurrer admits this fact. The statute prescribing the property to be taxed and that to be wholly exempted from taxation shows that this personal property must have been taxed for other purposes. This tax was levied exclusively upon the real estate of the city. That was a discrimination in favor of the personal property. It was beyond the constitutional power of the legislature to make any discrimination. *Property must be wholly exempted or not exempted at all.* No partial exemption or discrimination is permitted. To impose certain taxes exclusively upon one class of taxable property is as much a discrimination as to vary the rates of the same or other taxes upon different classes of property.

In *Hale* v. *Kenosha*, 29 Wis., 599, a provision in a city charter, by which a tax to pay the bonded debt of the city (for railroad aid, etc.) was required to be assessed on "all the lots and lands in the city, not including the improvements thereon," was

held void. The Supreme Court of Wisconsin there said (p. 604):

> The true doctrine unquestionably is, that while the legislature may by law exempt certain specific property or classes of property from taxation, such exemption, to be valid and operative, must be absolute and total. *The legislature has no power to exempt property from one tax, or from taxation for one purpose, and hold it liable to taxation for other purposes;* and this for the reason already indicated, that it is impossible to do so without violating the rule of uniformity which the constitution requires the legislature to observe.

In *Brick Co.* v. *Brewer*, 62 Maine, 62, a statute authorizing the exemption from taxation for the period of ten years of manufacturing and refining establishments thereafter established in the State, upon the vote of the town in which they were erected ratifying the same, was held to be unconstitutional, the court there said (p. 74):

> To have uniformity of taxation the imposition of and the exemption from taxation must be by one and the same authority—that of the legislature. It is for the legislature to determine upon what subject-matter taxation shall be imposed; upon land, upon loans, upon stock, etc., etc.; but the subject-matter once fixed, the rule is general, and applies to all property within its provisions. So it may relieve certain species of property from taxation, as the tools of the laborer, the churches of religious societies, etc.; but upon the non-exempted estate the taxation must be uniform as the exemptions are uniform. It can not be pretended that it would be constitutional to impose a tax on a church in A and to exempt one of the same character in B; to say that all or a part of the farms in the former shall be subject to a tax, while those in the latter shall be free from taxation. But if it be conceded that each town has the right to tax part and exempt part of the property located therein, whatever its character, uniformity in relation

to the subject-matter, as well as to the ratio of taxation, is at an end.

III. Uniformity required by the organic act of the Territory.

That act provides (26 stat. 81, 84, sec. 6):

> That the legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States, but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed on the property of the United States, *nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents*, nor shall any law be passed impairing the right to private property, *nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to the taxation shall be taxed in proportion to its value.*

It is manifest that the limitations here made upon the legislative power were intended to secure equal and uniform taxation. The lands and property of non-residents are not to be taxed higher than that of residents. If, then, the legislature may not discriminate between residents and non-residents, is it possible that it may discriminate between residents simply because no such discrimination is in terms prohibited?

"Nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to the taxation shall be taxed in proportion to its value." These two clauses must be read together, the latter, as the word "but" which conjoins it indicates, being a limitation upon the former. Their plain meaning is, that while the legislature may discriminate between different kinds of property, that is, may select the subjects of taxation, though such selection must be made with a view to equality and uniformity, yet when such selection is made all the property subject to the taxation—and all the property subject to the taxation is

all the property in the taxing district not wholly exempt from taxation—must be taxed in proportion to its value, that is, it must be made to bear its proportionate share of the burden.

The Supreme Court of Oklahoma admits that the provisions of the organic law require that "property of the same kind, in the same condition, and used for the same purposes, must be taxed by a uniform rule" (Rec., p. 47), but says that cattle and other property in these Indian reservations are not in the same condition as like property in the county. But the court overlooks the fact that property of the same kind in the same taxing district (and it holds that these reservations are in the same taxing district), is *conclusively presumed* to be in the same condition as other property of the same kind in the district. As already shown, the fact that certain property is situate in a less favorable portion of the district, and does not receive the same measure of benefit from the taxation, will not warrant its exemption.

In *Northern Pacific Railroad Company* v. *Walker*, 47 Fed. Rep. 681, the provisions of the organic law of the then Territory of North Dakota, that the legislature should not "make any discrimination in taxing different kinds of property, but all property subject to the taxation shall be taxed in proportion to its value," were held to require uniformity of taxation.

That case involved the validity of an act of the territorial legislature providing that all railroads in the Territory should pay a certain per cent on their gross earning in lieu of all other taxes. The Northern Pacific Company owned thousands of acres of land in the Territory which were in no way used in the operation of its road, and which, under the act, would have been exempted from general taxation.

The district court held that while railroads might be classified separately for the purposes of taxation and taxed by a method applicable to them alone, such differentiation

must be restricted to what was really railroad property, and could not be extended to lands which had no relation to the railroad or its use or operation.

It said (p. 685):

> Lands, by whomsoever owned, are subject to taxation, and must be taxed by a uniform rule according to their value. *This is the rule of the organic act*, and it must be observed.

Again (p. 686):

> It was not competent for the legislature, either under the organic act or the Fourteenth Amendment of the Constitution of the United States, to classify lands in the Territory, for purposes of taxation, into lands owned by railroad companies and lands owned by all other persons, and declare that the former should not and the latter should be taxed. The prohibition in the organic act against making "any discrimination in taxing different kinds of property" necessarily implies a prohibition against any discrimination in taxing the same kind of property. It establishes the just and reasonable rule, *which has become fundamental in our American system of taxation*, that the burdens of taxation shall fall equally upon all owners of the same kind of property. If the act in question is valid, then the wholesome and just provisions of the organic act, *intended to secure equality in the burdens of taxation, and to prevent discrimination and oppression*, are meaningless.

So the provisions of the constitution of New Hampshire, authorizing the general court "to impose and levy *proportional* and *reasonable* assessments, rates, and taxes upon all the inhabitants of and residents within the said State, and upon all the estates within the same," have been construed by the Supreme Court of New Hampshire to require equal and uniform taxation. For this reason, in *State* v. *Express Company*, 60 N. H. 219, a statute imposing a discriminatory tax upon express companies was held to be unconstitutional.

After stating that "equality and justice is the basis of all constitutional taxation, and a statute founded on any other principle can not be upheld," the court there said (p. 237):

> But this general principle of equality which, *independent of any constitutional provision*, underlies and forms the basis of all taxation is enforced here by the provision of the constitution that requires that "all assessments, rates, and taxes shall be proportional and reasonable." It is not left to the discretion of the general court to determine what is equal and reasonable and to impose such as they may consider equal, but any other than equal and reasonable taxes, rates, and assessments are prohibited, and the equality intended is "that the same tax shall be levied on the same amount of property in every part of the State, so that each man's taxable property shall bear its due proportion of the tax according to its value." (4 N. H. 568.)
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> . . . . . .
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> In considering the constitutional provisions on the subject of taxation, it must not be forgotten that the constitution is not so much a grant of specific powers as a limitation on the exercise of general powers. "The legislative power extends to every proper object of legislation, and is only limited by the constitution and by the fundamental principles of all government and the inalienable rights of man. Dart. Coll. *v.* Woodward, 1 N. H. 111, 114; Concord R.R. *v.* Greely, 17 N. H. 47, 54; Bank of Commerce *v.* N. Y. City, 2 Black, 620. The doctrine announced in the opinion in 4 N. H. 565 goes no further than to declare that the true constitutional idea and basis of all taxation is equality and justice, and that each person and his estate shall bear his proportional and reasonable share of the public burdens. This view was affirmed in Smith *v.* Burley, 9 N. H. 423, 427; Savings Bank *v.* Nashua, 46 N. H. 389, 398; Smith *v.* Exeter, 37 N. H. 556; Savings Bank *v.* Portsmouth, 52 N. H. 17, 26, 29; Morrison *v.* Manchester, 58 N. H. 538, 549; Edes *v.* Boardman, 58 N. H. 580, 587; Bank *v.* Landaff, 59 N. H. 164, 190, 193, 195; Gould *v.* Raymond, 59 N. H. 260, 275; Berry *v.* Windham, 59

N. H. 288; Robinson *v.* Dover, 59 N. H. 521; Railroad *v.* State, 60 N. H. 87, 94.

Again (p. 243):

> In order, however, that the tax should be proportional, it is not necessary that the rate of taxation should be the same in every town or taxing district in the State. This would be practically impossible, for each town determines for itself what amount must be raised to meet its ordinary expenses, and the amount of property and persons from whom it is to be raised are different in different towns and taxing districts; *but it is required that the rate shall be the same throughout the taxing district*—that is, if the tax is for the general purposes of the State, the rate should be the same throughout the State; if for the county, it should be uniform throughout the county—*and the requisite of proportion, or equality and justice, can be answered in no other way.*

The provisions of the constitution of Massachusetts are identical with those of the New Hampshire constitution, and, as pointed out by the Supreme Court of New Hampshire in the case just cited, have received the same construction.

Portland Bank *v.* Apthorp, 12 Mass. 252.
Com'th *v.* Savings Bank, 5 Allen, 428.
Oliver *v.* Washington Mills, 11 Allen, 268.
Com'th *v.* Savings Inst., 12 Allen, 312.
Com'th *v.* Lowell Gas-Light Co., 12 Allen, 75.
Insurance Co. *v.* Loud, 99 Mass. 146.
Prov. Inst. *v.* Boston, 101 Mass. 375.
Cheshire *v.* County Commissioners, 118 Mass. 386.
Conn. Mut. Life Ins. Co. *v.* Com'th, 133 Mass. 161, 162.
Gleason *v.* McKay, 134 Mass. 419, 424, 425.

In *Cheshire* v. *County Commissioners*, above cited, which involved the validity of a statute providing a special method for the taxation of reservoirs, the court said (118 Mass., p. 389):

> Regarding the statute then as declaring the entire

> reservoir to be a distinct and separate subject of valuation for the purposes of general taxation, and requiring that valuation to be made upon a basis which excludes all increase of value by reason of the improvements or additions made thereon for the construction and maintenance of the reservoir, however valuable or costly, the question is whether it conflicts with the constitutional provision which relates to the exercise of the taxing power by the legislature. That provision requires that all taxes levied under its authority be "proportional and reasonable," and forbids their imposition upon one class of persons or property at a different rate from that which is applied to other classes, whether that discrimination is effected directly in the assessment or indirectly through arbitrary and unequal methods of valuation. Portland Bank *v.* Apthorp, 12 Mass. 252; Commonwealth *v.* People's Savings Bank, 5 Allen, 428, 431; Commonwealth *v.* Hamilton Manufacturing Co., 12 Allen, 298, 301.

IV. Uniformity a Fundamental Limitation upon the Legislative Power.

That there are certain fundamental limitations upon the legislative power, which exist independent of any requirement of the organic law, is a principle that has been nowhere more strongly asserted than by this court.

In *Fletcher* v. *Peck*, 6 Cranch, 87, Chief Justice Marshall, speaking for the court, said (pp. 135-6):

> It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation? To the legislature all legislative power is granted, but the question whether the act of transferring the property of an individual to the public be in the nature of legislative power is well worthy of serious reflection.

In *Loan Association* v. *Topeka*, 20 Wall. 655, Mr. Justice Miller, speaking for the court, said (p. 663):

> The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers.
>
> There are limitations on such power which grow out of the essential nature of all free governments —implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name.

In the latter case the court held the rule that taxes must be imposed for public purposes only, to be fundamental, and therefore a statute authorizing a town to issue its bonds in aid of a manufacturing enterprise of individuals was void.

The doctrine of these cases was reasserted in *Chicago, Burlington, etc., Railroad* v. *Chicago*, 166 U. S. 226, in which case it was held that just compensation for private property taken for public use under the authority of a State was a necessary element of the due process of law enjoined by the fourteenth amendment.

The doctrine that the rule of uniformity is fundamental and must be observed, is supported by both reason and authority. It will have been observed that, in the cases cited under the last subdivision, the courts, in construing the provisions of the organic law, were governed by this consideration.

In his work on Constitutional Limitations (5th ed.), after referring to the vast scope of the legislative power of taxation, Judge Cooley says (pp. 603, 612, 614):

> Having thus indicated the extent of the taxing power, it is necessary to add that certain elements are essential in all taxation, and that it will not follow as of course, because the power is so vast, that everything which may be done under pretense of its

exercise will leave the citizen without redress, *even though there be no conflict with express constitutional inhibitions.* Everything that may be done under the name of taxation is not necessarily a tax; and it may happen that an oppressive burden imposed by the government, when it comes to be carefully scrutinized, will prove instead of a tax to be an unlawful confiscation of property, unwarranted by any principle of constitutional government.

In the first place, taxation having for its only legitimate object the raising of money for public purposes and the proper neeeds of government, the exaction of moneys from the citizens for other purposes is not a proper exercise of this power, and must therefore be unauthorized.

. . . . . .

In the second place, *it is of the very essence of taxation* that it be levied with *equality and uniformity*, and to this end that there should be some system of apportionment. Where the burden is common, there should be common contribution to discharge it. Taxation is the equivalent for the protection which the government affords to the persons and property of its citizens, and as all are alike protected so all alike should bear the burden in proportion to the interests secured.

. . . . . .

As to all taxation apportioned upon property, there must be taxing districts, and *within these districts the rule of absolute uniformity must be applicable.* A State tax is to be apportioned through the State, a county tax through the county, a city tax through the city.

The same author, in his work on Taxation (2d ed.), says (p. 241):

The principles by which the legislative apportionment of taxes is to be tested have been so admirably stated in a Kentucky case, that we prefer quoting the language of the court in preference to any attempt at stating them in words of our own: "When shall a tax be levied? To what amount? Shall it be a capitation or property tax? Direct or indirect?

Ad valorem or specific? And what classes of property are the fittest subjects of taxation? are all questions wisely confided by our constitution to the discretion of the legislative department, subject to no other limitation than that of the moral influence of public virtue or responsibility to public opinion. But in some other respects, and so far as the power of taxation may be effectual without being thus limited, it is, in our opinion, limited by some of the declared ends and principles of the fundamental laws. Among these political ends and principles, *equality*, as far as practicable, and security of property against irresponsible power, are eminently conspicuous in our State constitution. An exact equalization of the burdens of taxation is unattainable and utopian. But still there are well-defined limits within which the practical equality of the constitution may be preserved, and which, therefore, should be deemed impassable barriers to legislative power. Taxation may not be universal, but it must be *general* and *uniform*. Hence, if a capitation tax be laid, none of the class of persons thus taxed can be constitutionally exempt upon any other ground than that of public service; and if a tax be laid on land, no appropriation land within the limits of the State can be constitutionally exempted, unless the owner be entitled to such immunity on the ground of public service. The legislature, in the plenitude of the taxing power, can not have constitutional authority to exact from one citizen, or even from one county, the entire revenue for the whole commonwealth. *Such an exaction*, by whatever name the legislature might choose to call it, *would not be a tax, but would be, undoubtedly, the taking of private property for public use*, and which could not be done constitutionally without the consent of the owner or owners, or without retribution of the value in money. Robertson, Ch. J., in Lexington *v.* McQuillan's heirs, 9 Dana, 513, 516. See also Youngblood *v.* Sexton, 32 Mich. 406.

Desty on Taxation (pp. 175–176):

The legislature has the power to prescribe, not

> only the property to be taxed, but the rule by which it must be taxed, *and the only limitation of that power is that the rule shall be uniform.* Uniformity in taxing implies equality in the burden of taxation, and this equality of burden can not exist without uniformity in the mode of assessment, as well as in the rate of taxation. . . . *A tax is not unconstitutional when it is equal and uniform throughout the taxing district.*

In *State* v. *Moore*, 113 N. C. 697, there was involved the validity of an act providing that emigrant agents (defined by the statute to mean persons engaged in hiring laborers in the State to be employed outside its limits) should pay a license fee of $1,000 for the privilege of doing business *in certain counties* of the State.

Speaking by its chief justice, the Supreme Court of North Carolina said (pp. 699–700):

> It must be manifest from these provisions that the principle of uniformity is entirely disregarded, and that, if the act is to be considered as an exercise of the taxing power of the legislature, it must, under the repeated decisions of this court, be declared unconstitutional and void.
>
> The Constitution, Art. V, sec. 3, authorizes the legislature to tax "trades, professions, franchises," etc., and, *although it is not expressly provided that such taxes shall be uniform*, "Yet," says Rodman, J., speaking for the court in *Gatlin* v. *Tarboro*, 78 N. C. 119, "*a tax not uniform*, as properly understood, *would be so inconsistent with natural justice and with the intent which is apparent in the section of the Constitution* above cited, that it would be restricted as unconstitutional."
>
> In *Worth* v. *Railroad*, 89 N. C. 291, the principle just stated was distinctly recognized and declared to be within the spirit and meaning of the fundamental law. Smith, C. J., in delivering the opinion of the court, said: "We should be reluctant to hold, if there were no question of constitutional right involved, that this method of levying taxes was sanctioned by our constitution, and consistent with the equality and uniformity which it contemplates. The

> 'uniform rule' to be observed in the exercise of the taxing power seems so far applicable to the taxes imposed on trades, professions, etc., as to require that no discriminating tax be imposed upon persons pursuing the same vocation, while varying amounts may be assessed upon vocations or employments of different kinds." Again, in *Puett* v. *Commissioners*, 94 N. C. 709, it was said: "*The principle of uniformity pervades the fundamental law*, and, *while not in the Constitution applied in express terms* to the tax on trades, professions, etc., *necessarily underlies the power of imposing such a tax.*" In this last case the court adopted the words of Miller, J., in the *Railroad Tax Cases*, 92 U. S. 575: "That while one tax may be imposed upon inn-keepers, another upon ferriers, and a still different tax on railroads, the taxation must be the same on each class—that is, the same tax upon all inn-keepers, upon all ferries and upon all railroads, in their respective classes as taxable subjects." And again in *State* v. *Powell*, 100 N. C. 525, the same language was accepted as a correct definition of "uniformity," and it was repeated "that *uniformity*, in its legal and proper sense, *is inseparably incident to the power of taxation.*"

In *State, etc.*, v. *Township Committee*, 36 N. J. 66, the legislature had passed an act which directed a portion of the funds thereby authorized to be raised for the purpose of completing a school house to be assessed only upon the inhabitants of the school district who had not paid the assessment made against them the preceding year for defraying the cost of the building in question, the amount so unpaid being considerably less than that which it was proposed to assess against them. The Supreme Court of New Jersey said (pp. 69–70):

> The act in question has none of the qualities of an act validating the proceedings in levying the former tax. It is the assumption by the legislature of the power to subject the delinquents to a penalty of $1,000 for a delinquency of $200, in the discretion of the township committee. That this is the

real import of the act is apparent. Indeed, the learned and astute counsel who argued this motion in behalf of the relators so clearly discerned the exact import of this legislation that he was driven to maintain before the court that it was within the power of the legislature to select certain individuals as subjects of taxation, and impose upon them individually such burdens as the legislature saw fit, even to the extent of the payment of the State debt, or defraying the entire expenses of the State government.

The power of the legislature in the matter of taxation is said to be unlimited. Such undoubtedly is the theory of our Government. But it is not every exaction made under color of taxation that can be supported as the legitimate exercise of the sovereign power of taxation. *It is of the very essence of taxation that it should be equal and uniform*, and that where the burden is common there should be a common contribution to discharge it. (Cooley's Const. Law, 495.) Not that it is essential to the validity of taxation that it should be levied according to rules of abstract justice. The legislature may create special taxing districts, defining their limits in its discretion, or designate certain occupations, trades, or employments as special subjects for taxation; or discriminate between different kinds of property in the rate of taxation; or may apportion the tax among the classes of persons or property made liable to taxation in such manner as may seem fit. In this way inequalities in the share of the public burden, or even double taxation, may arise without any relief except by appeal to the legislature. *But when the taxing district has been defined*, and the classes of persons or kind of property specially set apart for taxation have been designated, *the tax must be apportioned among those who are to bear the burden upon the rule of uniformity.* Cooley's Const. Law, pp. 493–513.

In *State* v. *Express Co.*, 60 N. H. 219, heretofore referred to, the Supreme Court of New Hampshire said (p. 236):

If, then, equality and justice is the basis of all con-

stitutional taxation, a statute founded on any other principle can not be upheld. It is true that absolute equality of taxation can not in all cases, perhaps not in any case, be attained; but if the inequality results from the inherent difficulty in applying the law, and not from the law itself, we can not declare the law unconstitutional and arrest the course of legislation. "*The essential characteristics of any system of taxation*, properly so called, *are certainly equality and universality.* All the persons and property within a State, district, city, or other fraction of territory having a local sovereignty for the purpose of taxation, should, as a general rule, constitute the basis of taxation." State v. Charleston, 12 Rich. 702, 732; O'Neal v. Bridge Co. 18 Md. 1. "The principle of just equality is therefore the governing one by which the validity of every tax levied by the legislature is to be determined. *This equality can be secured only by uniformity in levying the tax*, and a periodical valuation of the estate of every citizen." Black Tax Titles 6. It is not sufficient that no tax be imposed on the citizens, but by their representatives in the legislature. The citizens are entitled to require that *the legislature itself shall cause all public taxation to be fair and equal in proportion to the value of property*, so that no one species of property may be unequally or unduly assessed." 2 Kent. Com. 331.

In Brick Co. *v.* Brewer, 62 Maine, 62, heretofore referred to, the Supreme Court of Maine said (73-74):

> By article 9, sec. 8, "all taxes upon real estate, assessed by authority of this State, shall be apportioned and assessed equally, according to the just value thereof." Though this section applies specially to real estate, *yet the very idea of taxation implies an equal apportionment and assessment upon all property*, real and personal, "according to its just value." It can not for a moment be admitted that the constitution authorizes an unequal apportionment and assessment upon real and personal estate, without any reference to its "just value."
>
> * * * * * * *

> The legislature may determine the amount of taxation and select the objects. They may exempt by general and uniform laws certain descriptions of property from taxation, and lay the burden of supporting government elsewhere.
>
> But while there are no limits in the amount of taxation for public purposes, nor in the subject-matter upon which it may be imposed, *the requirement that it shall be uniform and equal upon the valuations made is universal.*

It thus clearly appears that a departure from the rule of uniformity would be a taking of private property for public use without just compensation, so far as the persons not exempted are concerned, as well as a deprivation of their property without due process of law. In both these respects, therefore, the act of 1899 violates the Fifth Amendment of the Constitution of the United States.

V. The Kansas Case Distinguished.

The case of *Francis, State Treas.*, v. *A. T. & S. F. Railroad Co.*, 19 Kansas, 303, referred to by the Supreme Court of Oklahoma, is readily distinguishable from this.

That case involved the validity of an act of the State of Kansas providing for the taxation of railroad property located outside the limits of organized counties. The auditor of the State was directed to make a levy of tax upon such property for State purposes, the same as was made upon other taxable property in the organized counties, and place the same in the hands of the State treasurer for collection. If such taxes were not paid before a certain date, the State treasurer was to issue a warrant to any sheriff in the State, commanding him to levy the amount of the unpaid taxes, with certain additions of the personal property of the delinquent railroad company, and pay the same to the State treasurer.

It was contended that the act violated the rule of uni-

formity, because other personal property in unorganized counties was exempted from the tax. The court observed that the freedom from taxation of property other than railroad property in the unorganized counties under the act in question arose in the same manner as the freedom of all property in such counties under prior statutes—through the failure to provide machinery for reaching it. The question presented was, therefore, stated to be "*whether the failure to provide machinery for collecting taxes on all the property in the unorganized counties* renders unconstitutional the means employed to collect taxes on a portion of said property, and invalidates the tax attempted to be collected by such means."

The court sustained the statute on the ground that the constitution of the State did not expressly require all property to be taxed. Referring to the question of uniformity, Mr. Justice Brewer, who delivered the opinion of the court, said (p. 314):

> We do not wish to be understood as intimating that there is no restriction on legislative action in the matter of taxation. *Underlying all valid taxation rests the principle of uniformity, a principle whose existence is implied if not in positive and express terms enjoined by the provisions of our Constitution.* But in practical operation, a general rule or principle is often limited by some other general rule or principle, or by the facts and conditions under which its application is invoked. And sometimes it happens that a general rule is given its truest and most thorough enforcement by an apparent disregard in minor and temporary matters of its mandates. Thus it may be that uniformity in the burden of taxation, will be secured in the truest and best sense by not attempting to extend the machinery of taxation into the unorganized counties *where the expense of the machinery may exceed the proceeds of the tax;* and this being so, the principle of unifomity is in no just sense overthrown or disregarded by leaving the property in those counties untaxed. In a limited sense it may be said that there

> is a disregard of the obligations of uniformity because there is no attempt to reach all property; but in a higher and better sense, it is clear that there is secured an equality and uniformity in the burden of taxation. The spirit is present, though the letter may be wanting.

At the close of his opinion, the justice said (p. 316):

> The conclusions which we have reached are by no means entirely satisfactory to us. We hold the section to be constitutional and valid, not because it is clear to us that it is so, but because it is not clear to us that it is not; and the benefit of the doubt must be given to the law. The question would be different if discrimination was attempted between property in organized counties, or if the constitution did not contain but a single provision which seems to imply and rest upon the assumption of organized communities.

No such state of facts are presented in this case. Here the unorganized country referred to is subject to taxation in the organized county to which it is attached for judicial purposes, and the machinery for the collection of taxes in such country, namely, the county machinery, is adequate for the collection of all taxes and has been so employed. The exigency which justified a departure from the rule of uniformity does not therefore exist here.

It is also to be observed that the Kansas statute was one imposing taxes, while the Oklahoma act is one making exemptions, and therefore in derogation of the sovereign power. Hence the final consideration which moved the court to sustain the act in the former case does not apply here. A statute making exemptions is not entitled to the benefit of the doubt.

VI. The Act of 1899 Has No Present Application.

The language is—

> "That from and after the passage and approval of

> this act, no taxes shall be assessed, levied or collected in any unorganized county, district, or reservation *which shall be* or *which may hereafter be* attached to any county for judicial purposes, except taxes for the territorial and court funds."

As the statute undertakes to grant an exemption from taxation, it is in derogation of public right, and is therefore to be construed *strictissimi juris*. The language on its face is entirely in the future. To give it present application the words "*shall be* or which may hereafter be" must be construed to mean "*now is* or which may hereafter be." Two words must be eliminated, and two other words substituted. The words "shall be," it will be noticed, are twice used in the same sentence in the act, and it will be presumed that they are used in both places with the same meaning.

Were this a case in which the intention of the legislature was to be sought in the language used, the point might not be insisted on; but it is to be remembered that, in a case where an exemption from taxation is claimed, the intention of the legislature to grant it and the nature of the exemption granted must appear in clear and unambiguous language.

The doctrine of this court as to the strict construction of tax exemption acts is well settled.

In *United States* v. *Goldenberg*, 168 U. S. 95, the court, speaking by Mr. Justice Brewer, said (p. 102):

> The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. *He is presumed to know the meaning of the words and the rules of grammar.* The courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. *No mere omission, no mere failure to provide*

> *for contingencies,* which it may seem wise to have specifically provided for, *justify any judicial addition to the language of the statute.*

Exemptions from taxation are usually made at the instigation and with the knowledge of the persons exempted, which is another reason for their strict construction. Thus, in *Ohio Life Insurance and Trust Co.* v. *Debolt,* 16 How. 416, which involved the interpretation of a law of Ohio under which the company claimed an exemption upon taxation, Chief Justice Taney said (p. 435):

> The rule of construction, in cases of this kind, has been well settled by this court. The grant of privileges and exemptions to a corporation are strictly construed against the corporation and in favor of the public. *Nothing passes but what is granted in clear and explicit terms,* and neither the right of taxation nor any other power of sovereignty which the community have an interest in preserving, undiminished, will be held by the court to be surrendered, unless the intention to surrender is manifested by words too plain to be mistaken. This is the rule laid down in the case of *Billings* v. *The Providence Bank,* and reaffirmed in the case of *The Charles River Bridge Company.*
>
> Nor does the rule rest merely on the authority of adjudged cases. It is founded in principles of justice, and necessary for the safety and well being of every State in the Union. For it is a matter of public history, which this court can not refuse to notice, that almost every bill for the incorporation of banking companies, insurance and trust companies, railroad companies, or other corporations, is drawn originally by the parties who are personally interested in obtaining the charter; *and that they are often passed by the legislature in the last days of its session, when, from the nature of our political institutions, the business is unavoidably transacted in a hurried manner, and it is impossible that every member can deliberately examine every provision in every bill upon which he is called on to act.*

In the present case the Oklahoma statute under which the exemption is claimed was passed on the last day of the session of the legislature. (Sess. Laws 1899, pp. 218, 219; *Id.*, certificate Secretary of the Territory, p. iv.)

In the Debolt case the court further said (p. 436):

> On the other hand, those who accept the charter have abundant time to examine and consider its provisions before they invest their money; and if they mean to claim under it any peculiar privileges, or any exemption from the burden of taxation, it is their duty to see that the right or exemption they intend to claim is granted in clear and unambiguous language. The authority which this court is bound, under the Constitution of the United States, to exercise, in cases of this kind, is one of its most delicate and important duties; and if individuals choose to accept a charter in which the words used are susceptible of different meanings, or might have been considered by the representatives of the State as words of legislation only, and subject to future revision and repeal, and not as words of contract, the parties who accept it have no just right to call upon this court to exercise its high power over a State upon doubtful or ambiguous words, nor upon any supposed equitable construction or inferences made upon other provisions in the act of incorporation. If there are equitable considerations in their favor, the application should be made to the State, and not to this court. If they come here to claim an exemption from their equal share of the public burdens, or any peculiar exemption or privilege, they must show their title to it, and that title must be shown by plain and unequivocal language.

In *Vicksburg, etc., Railroad Company* v. *Dennis*, 116 U. S., 665, the question involved was whether a charter which contained the provision, "The capital stock of said railroad company shall be exempt from taxation, and its road, fixtures, workshops, warehouses, vehicles of transportation, and other appurtenances shall be exempt from taxation *for ten*

years after the completion of said road within the limits of this State," exempted the road, fixtures and appurtenances of the railroad from taxation before such completion of the road. In that case, the future aspect of the statute involved was much less pronounced than in the present case.

Speaking by Mr. Justice Gray, the court there said (p. 667):

> In the leading case of *Providence Bank* v. *Billings*, 4 Pet. 514, Chief Justice Marshall, speaking of a partial release of the power of taxation by a State in a charter to a corporation, said:
>
> "That the taxing power is of vital importance, that it is essential to the existence of government, are truths which it can not be necessary to reaffirm." "As the whole community is interested in retaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed, in a case in which the deliberate purpose of the State to abandon it does not appear." "*We must look for the exemption in the language of the instrument*; and *if we do not find it there, it would be going very far to insert it by construction.*" 4 Pet. 561–563.
>
> In *Philadelphia and Wilmington Railroad* v. *Maryland*, 10 How. 376, Chief Justice Taney said: "This court on several occasions has held that the taxing power of a State is never presumed to be relinquished, unless the intention to relinquish is declared in *clear and unambiguous terms.*" (10 How. 393.)
>
> In the subsequent decisions the same rule has been strictly upheld and constantly reaffirmed in every variety of expression. It has been said that "neither the right of taxation, nor any other power of sovereignty, will be held by this court to have been surrendered, unless such surrender is expressed in terms too plain to be mistaken;" that exemption from taxation "should never be assumed unless the language used is too clear to admit doubt;" that "nothing can be taken against the State by presumption or inference; the surrender, when claimed, must be shown by *clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power*; if a doubt arise as to the intent of

the legislature, that doubt must be solved in favor of the State;" that a State "can not by ambiguous language be deprived of this highest attribute of sovereignty;" that any contract of exemption "is to be rigidly scrutinized, and never permitted to extend either in scope or duration, beyond what the terms of the concession clearly require;" and that such exemptions are regarded "as in derogation of the sovereign authority and of common right, and therefore not to be extended beyond the exact and express requirement of the grants, construed *strictissimi juris*." (Jefferson Branch Bank *v.* Skelly, 1 Black, 436, 446; Gilman *v.* Sheboygan, 2 Black, 510, 513; Delaware Railroad Tax, 18 Wall. 206, 225, 226; Hoge *v.* Railroad Co., 99 U. S. 348, 355; Southwestern Railroad *v.* Wright, 116 U. S. 231, 236; Erie Railway *v.* Pennsylvania. 21 Wall. 492, 499; Memphis Gaslight Co. *v.* Shelby Taxing District, 109 U. S. 398, 401; Tucker *v.* Ferguson, 22 Wall. 527, 575; West Wisconsin Railway *v.* Supervisors, 93 U. S. 595, 597; Memphis & Little Rock Railroad *v.* Railroad Commissioners, 112 U. S. 609, 617, 618.)

This case has been followed in—

Chicago, etc., Rwy. Co. *v.* Guffey, 120 U. S. 569, 575; Yazoo R. R. Co. *v.* Thomas, 132 U. S. 174, 185, and Schurz *v.* Cook, 148 U. S. 397, 409.

It was urged in the Vicksburg case that the intent of the legislature undoubtedly was to exempt the railroad company from taxation while its road was being constructed and it was earning no dividends. The court, however, said that if the legislature had so intended it would have been easy to use the word "until" instead of "for;" and that the statute must be read as written.

In *Ford* v. *Delta and Pine Land Co.*, 164 U. S. 662, it was held that a provision of an act of the State of Mississippi chartering a railroad company, which provided that "the capital stock and *all the property and effects of said company* shall be exempt from taxation until said road is com-

pleted," could not, under the authority of the previous decisions of the court, be construed as including real estate belonging to the company not used in the actual operation of its road.

The case of *Lake County* v. *Rollins*, 130 U. S. 662, involved the construction of a section of the constitution of Colorado. The court declined to make a substitution of words in order to arrive at the supposed meaning of its makers. Speaking by Mr. Justice Lamar (p. 670), it said:

> To get at the thought or meaning expressed in a statute, a contract or constitution, the first resort, in all cases, is to the natural signification of the words in the order of grammatical arrangement in which the framers of the instrument have placed them. If the words convey a definite meaning which involves no absurdity, nor any contradiction of other parts of the instrument, then that meaning, apparent on the face of the instrument, must be accepted, and neither the courts nor the legislature have the right to add to it or take from it. (Newell *v.* People, 7 N. Y. 9, 97; Hills *v.* Chicago, 60 Illinois, 86; Denn *v.* Reid, 10 Pet. 524; Leonard *v.* Wiseman, 31 Maryland, 201, 204; People *v.* Potter, 47 N. Y. 375; Cooley, Const. Lim. 57; Story on Const. Sec. 400; Beardstown *v.* Virginia, 76 Illinois, 34.) So, also, where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction. (United States *v.* Fisher, 2 Cranch, 358, 399; Doggett *v.* Florida Railroad, 99 U. S. 72.)

Even where the statute is not one making exemptions, the plain meaning of the statute is not to be departed from simply because that meaning may seem unreasonable or absurd in its consequences.

In *Pirie* v. *Chicago Title and Trust Company*, 182 U. S. 452, where the question was whether a preference was given in the National Bankrupt Act of July 1, 1898, the court

quoted as follows the rule expressed in *Sturgis* v. *Crowninshield*, 4 Wheat. 202:

> It would be dangerous in the extreme to infer from extrinsic circumstances that a case for which the words of an instrument expressly provide shall be exempted from its operation. Where words conflict with each other, where the different clauses of an instrument bear upon each other, and would be inconsistent unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. But, if in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case *would be so monstrous* that all mankind would, *without hesitation*, unite in rejecting the application.

It is also to be observed that the exemption of any particular property from taxation results in the imposition of increased taxes upon the property otherwise situated which is not exempt..

> Brewer Brick Company *v.* Brewer, 62 Me. 62.
> Farnsworth Company *v.* Lisbon, 62 Me. 451.

It is unnecessary to cite further cases on this point. The principle is the same whether the exemption claimed is found in an act of incorporation, or in a statute providing a system of taxation. The statute in the present case passed under circumstances similar to those supposed in the Debolt case certainly did not grant the exemption claimed in clear and unambiguous language, no matter what the intention of the legislature may have been. It was the duty of the legislature to express its will clearly and positively, and where it has not done so the courts can not be expected to lend their aid to increase the general public burden.

VII. The Act of 1899 is Local or Special Legislation.

The act of Congress of July 30, 1886, 24 Stat. 170, c. 818, entitled "An act to prohibit the passage of local or special laws in the Territories of the United States," etc., provides (sec. 1):

> The legislatures of the Territories of the United States now or hereafter to be organized shall not pass local or special laws in any of the following enumerated cases, that is to say . . . for the assessment and collection of taxes for territorial, county, township or road purposes.

In Bouvier's Law Dictionary (Rawle's Revision, vol. 2, p. 1034) special and local laws are thus defined:

> A special law is one which relates either to particular persons, places, or things, or to persons, places, or things which, though not particularized, are separated by any method of selection from the whole class to which the law might, but for such legislation, be applicable. Binney, Restr., etc., 26.
>
> A local law is one whose operation is confined within territorial limits, other than those of the whole State or any properly constituted class or locality therein.
>
> The features of local and special legislation overlap, but they are not coterminous. The matter to which a local law relates may be either general or special, but in either case the law itself is not in force outside of the locality for which it is passed.

The Supreme Court of Oklahoma has held that any unorganized country, district, or reservation attached to an organized county for judicial purposes is, by virtue of the act of 1895, a part of the county taxing district. Necessarily, then, the act of 1899, which exempts this part of the county taxing district from the payment of all county taxes, except those for the court fund, thereby establishing two rules for levying county taxes in the same district, comes within the

provision of the act of Congress forbidding special and local legislation "for the assessment and collection of taxes for . . . county . . . purposes." It is both a special and a local law; special, because the property to which it applies is thereby set apart from the rest of such property in the same taxing district; local, because its application is limited to a part of the county taxing district.

A case directly in point is *Van Loon* v. *Eagle*, 171 Pa. St. 157. In that case the Supreme Court of Pennsylvania held that an act making taxes assessed upon real estate a first lien and providing for the collection of such taxes, which excepted from its operation cities of the first, second, and fourth classes, violated the provision of the State constitution prohibiting the passage of local or special laws regulating the affairs of counties, cities, townships, etc. The court said (pp. 164–5):

> The act of 1881 purports to be a general law, and provides that "all taxes, whether county, township, poor, school, or municipal taxes" shall be a first lien on the real estate on which such taxes are assessed. It provides for the return of such lands upon nonpayment of the taxes and for their sale for the collection of the taxes unpaid. Cities of the first, second, and fourth classes are excepted from its operations. Townships, boroughs, and cities of the third class remain under its operations. *We thus have one system for the collection of taxes and for creating liens in one class of cities, and a different system in the other classes.*
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> . . .
>
> This is so clearly in the face of the constitutional provisions referred to, and so destructive to that uniformity of procedure upon subjects of general interest which it is the object of the Constitution to bring about and preserve, that a simple statement of the necessary consequences of the enforcement of the act of 1881 renders an argument upon the constitutional questions unnecessary.

In *Board* v. *State*, 145 Ind. 604, the Supreme Court of Indiana held that an act providing for the relocation of a

county seat, that being a county purpose and requiring the levy and collection of a special tax in the township in which the county seat should be located, was in contravention of the constitutional provision forbidding the legislature to pass local or special laws "for the assessment and collection of taxes for State, county, or road purposes." The act was also held to violate the rule of uniformity and equality prescribed by the constitution.

VIII. The Validity of the Assessment.

The brief of counsel for appellees is addressed largely to the contention that the assessment of their property was irregular and without authority of law.

In *Russell* v. *Green*, 10 Okla. 340, before referred to, the Supreme Court of Oklahoma in reply to the contention that the cattle of the appellant were assessed in the State of Texas for the same year prior to the time they were brought into Oklahoma, and that he had so advised the assessor and signed and sworn to a statement which he supposed, at the time he swore to it, showed that fact, said (p. 341):

> As the plaintiff is a non-resident of the Territory his cattle are included within the provisions of sec. 1 of the transient property act, and can not be discharged from taxation under sec. 3 of that act, as sec. 3 only refers to persons who settle in a county and bring property into such county with them, or to associations or corporations which organize in a county and bring property into such county (Collins & Wallace *v.* Green, Treas., Lancaster & Noble *v.* Green, Treas., M. Holff & Bro. *v.* Green, Treas., all decided at the present term of this court).

As to the authority of the county assessor of Noble County to assess cattle and other personal property in the Ponca and Otoe Indian reservations there can be no question. The Supreme Court of Oklahoma held (Rec., pp. 42–43)

that the effect of the act of 1897, in doing away with the system of township assessors, was to repeal that part of the act of 1895 providing a special assessor for unorganized territory attached to a county, such assessor being, in fact, a part of the township system, having been given under the law the powers and duties of a township assessor, and to vest in the county assessor provided thereby jurisdiction over the entire county taxing district, which included such unorganized territory.

This was undoubtedly the logical and reasonable view to take of the act of 1897. But whether correct or not, it should be accepted by this court for the reasons heretofore adverted to. The supreme court of a Territory, equally with the supreme court of a State, is the proper tribunal to construe the enactments of its legislative department, which have only a local application, and which, as construed, do not conflict with the Constitution, laws or treaties of the United States.

The contention as to irregularity in the assessment of appellees' property is also without merit. The board of county commissioners of Noble County was, under the law, the proper authority to correct any errors in such assessment, and the petition shows that appellees were accorded a hearing before that board. The fact that the board rescinded its action releasing their property from taxation and sustained the assessment is a matter of which they can not complain. This the board had a perfect right to do while the matter was still within their control, and neither notice to or the consent of the appellees was necessary. A hearing was all they were entitled to, and that they had.

These questions were all pressed upon the attention of the courts below, but the judgment of the Supreme Court of Oklahoma sustaining the act of 1899 proceeds upon the theory that the proceedings of the county officers for the assessment and collection of the taxes for the court and territorial funds were regular and proper.

IX. The Exemptions Made by the Act of 1899 Arbitrary and Unjust.

As pointed out in appellants' original brief (pp. 5-6), the effect of the act of 1899 will be to relieve property owners in these Indian reservations from their proper share of the burdens of government. While the reservations are not, as a matter of fact, a part of the county, they are so, for all practical purposes, and the people and property therein derive a substantial equality of benefit from the several county funds with the people and property in the county to which they are attached, and from which they are separated only by an imaginary line. This, as already stated, was held to be the fact in *Thomas* v. *Gay*, where this court, referring to the reservations attached to Kay County, said (169 U. S. p. 278):

> It is further contended that, while the taxes assessed for territorial and court expense funds may be valid, yet that the balance of the taxes, levied for county purposes and expended within the geographical limits of Kay County, are unauthorized, for the reason that the people on these reservations are not interested in such taxes and receive no benefit from their expenditure. But, as it seems to us, it can not be maintained that those plaintiffs whose cattle are within the protection of the laws of Oklahoma receive no benefit from the expenditures in Kay County. Certainly they have some advantage in the improvement of the roads within that county when they journey to and from the towns and settlements in the organized county. They are interested in the prevalence of law and order in the communities adjacent to their property, and in the provision made for the care of the poor and insane. It is to be presumed that they have a right to send their children to the schools in the organized county.

The argument based on the fact that prior to the act of 1895 property in these reservations was not taxed at all, and that therefore the legislature may subject such property

to whatever burdens it sees fit, is as startling as it is fallacious. Surely the legislative power is not so omnipotent and property owners so defenseless. The correct view, we contend, is, that while property in any unorganized country in a State or Territory may be allowed to go untaxed as long as the conditions are such as to render the collection of taxes therein impracticable, as for want of proper machinery, yet, when that stage in its development is passed and taxation becomes feasible, such property must be made to bear, and continue to bear, its proportionate share of the burdens of government.

Applying these principles to the present case, it would seem that if, as this court has held, personal property in these Indian reservations was rightfully subjected to the same taxation as like property in the county to which they are attached, it can not now, and so long as it remains a part of the county taxing district, be exempted therefrom in whole or in part.

WILLIAM R. HARR,
WILLIAM J. HUGHES,
Of Counsel for Appellants.

HORACE SPEED,
Attorney for Appellants.

No. 173.

OCT 9 1902

JAMES H. McKENNEY, Clerk.

In The Supreme Court

OF THE United States of America.

GEORGE A. FOSTER, Sheriff of Noble County, Territory of Oklahoma and G. T. BRYAN as Treasurer of Noble County, Territory of Oklahoma, Appellants,

vs.

I. T. PRYOR; I. T. Pryor & Co., a partnership composed of I. T. Pryor, J. H. Morris and Howard Ross; C. A. Keeran; Stafford Land & Cattle Company, a foreign corporation doing business in the Territory of Oklahoma under the laws thereof; M. L. Hite; W. R. Moore; P. S. Witherspoon and Phillip Witherspoon, partners doing business under the firm name and style of P. S. Witherspoon & Son; P. S. Witherspoon and Frank Witherspoon, partners doing business under the firm name and style of P. S. and F. Witherspoon; P. S. Witherspoon and Ed. T. Bomar, partners doing business under the firm name and style of Witherspoon & Bomar; 101 Live Stock Company, Appellees.

No. 173

Appeal From Supreme Court Oklahoma Territory.

Motion to Dismiss and Brief of Appellees.

HENRY E. ASP,
S. H. HARRIS,
W. L. BARNUM,
Attorneys for Appellees.

In The Supreme Court

OF THE

United States of America.

GEORGE A. FOSTER, Sheriff of Noble County, Territory of Oklahoma and G. T. BRYAN as Treasurer of Noble County, Territory of Oklahoma,

Appellants,

vs.

I. T. PRYOR; I. T. Pryor & Co., a partnership composed of I. T. Pryor, J. H. Morris and Howard Ross; C. A. Keeran; Stafford Land & Cattle Company, a foreign corporation doing business in the Territory of Oklahoma under the laws thereof; M. L. Hite; W. R. Moore; P. S. Witherspoon and Phillip Witherspoon, partners doing business under the firm name and style of Witherspoon & Son; P. S. Witherspoon and Frank Witherspoon, partners doing business under the firm name and style of P. S. and F. Witherspoon; P. S. Witherspoon and Ed. T. Bomar, partners doing business under the firm name and style of Witherspoon & Bomar.

Appellees.

No. 173

NOTICE OF MOTION TO DISMISS.

To Horace Speed, Attorney for Appellants:

You are hereby notified that on Monday, the 20th day of October, 1902, the above-named appellees will present to the Supreme Court of the United

States, their motion to dismiss the appeal in the above cause, together with the foregoing brief and argument upon said motion and the brief upon the merits of said cause, hereto attached.

HENRY E. ASP,
S. H. HARRIS,
W. L. BARNUM,
Attorneys for Appellees.

Service of the above and foregoing notice, together with the motion to dismiss appeal and the brief and argument thereon and the brief and argument upon the merits, referred to in the foregoing notice, is hereby accepted, this .... day of September, 1902.

....
Attorney for Appellants.

In The Supreme Court

OF THE

United States of America.

GEORGE A. FOSTER, Sheriff of Noble County, Territory of Oklahoma and G. T. BRYAN as Treasurer of Noble County, Territory of Oklahoma,

Appellants,

vs.

I. T. PRYOR; I. T. Pryor & Co., a partnership composed of I. T. Pryor, J. H. Morris and Howard Ross; C. A. Keeran; Stafford Land & Cattle Company, a foreign corporation doing business in the Territory of Oklahoma under the laws thereof; M. L. Hite; W. R. Moore; P. S. Witherspoon and Phillip Witherspoon, partners doing business under the firm name and style of Witherspoon & Son; P. S. Witherspoon and Frank Witherspoon, partners doing business under the firm name and style of P. S. and F. Witherspoon; P. S. Witherspoon and Ed. T. Bomar, partners doing business under the firm name and style of Witherspoon & Bomar; 101 Live Stock Company,

Appellees.

No. 173

Motion to Dismiss and Brief of Appellees.

HENRY E. ASP,
S. H. HARRIS,
W. L. BARNUM,
Attorneys for Appellees.

In The Supreme Court

OF THE

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vs.

I. T. PRYOR; I. T. Pryor & Co., a partnership composed of I. T. Pryor, J. H. Morris and Howard Ross; C. A. Keeran; Stafford Land and Cattle Company, a foreign corporation doing business in the Territory of Oklahoma under the laws thereof; M. L. Hite; W. R. Moore; P. S. Witherspoon and Phillip Witherspoon, partners doing business under the firm name and style of Witherspoon & Son; P. S. Witherspoon and Frank Witherspoon, partners doing business under the firm name and style of P. S. and F. Witherspoon; P. S. Witherspoon and Ed. T. Bomar, partners doing business under the firm name and style of Witherspoon & Bomar,

Appellees.

No. 173

MOTION TO DISMISS.

Come now the above-named appellees and move the court to docket and dismiss the appeal of the above-named appellants for the following reasons:

First. That said appeal was not docketed in

this Court, in the office of the Clerk before the return day, towit: The 6th day of October, 1901, as appears from the date of the official filing of the record herein.

Second. Because this court has no jurisdiction of said appeal, in as much as the amount in controversy between the appellants and any one of the appellees does not amount to the sum of five thousand dollars, and the claims of several plaintiffs in the trial court, resting upon different facts and legal grounds, are attempted to be united in one suit and appeal for the purpose of presenting a cause involving a sufficient amount to give this court jurisdiction.

HENRY E. ASP,
S. H. HARRIS,
W. L. BARNUM,
Attorneys for Appellees.

BRIEF AND ARGUMENT
On Motion to Dismiss Appeal.

The first ground of the motion to dismiss is based entirely upon the record of the official filing of the case in this court and the appeal and citation, and it is claimed that appellants have not complied with Rule Nine, of this Court.

Under the second ground of the motion appellees contend that the amount of five thousand dollars is not involved in the cause or the appeal, and that several distinct and different causes of action are attempted to be set up in a single case, by a large number of different parties.

The petition presents a large number of different issuable facts on the part of the various parties, and only a portion of the facts relied upon are common to all the parties to the action.

Where the parties severally rely upon facts not common to all their causes of action are several, and can not be joined in one action for the purpose of giving this court jurisdiction, or for any other purpose.

Webber vs. Dillon, 7 Oklahoma, 568.

Chamberlin, et al, vs. Browning, et al, 177 U. S., 604.

We suggest a few of the many different issuable facts under the statutes of this territory:

First: Residence of the appellees.

Second: As to the time of bringing the property into the Reservation referred to in the petition.

Third: The purpose for which the cattle were brought into and kept in the said reservation.

Fourth: The assessment of and payment of taxes upon the same cattle for the same year in the State of Texas.

Fifth: By what officer the assessment complained of was made.

Sixth: Lack of opportunity on the part of the tax-payer to make proper showing of the prior assessment and taxation upon the same property in the foreign state.

Seventh: The allegation that the property was assessed without the knowledge of the owner.

Eighth: That the assessment complained of was made without the officer having visited the same for the purpose of ascertaining its true value.

Ninth: Allegations as to proof and showing made before the Board of County Commissioners with reference to the correction of the assessments.

Tenth: The Proceedings of the Board of County

Commissioners, without notice to the tax-payers, after the levies had been set aside.

Eleventh: The tender of taxes for Court and Territorial purposes, prior to the beginning of the injunction proceeding.

In order that the foregoing suggestions may be understood in the light of our statutory law we quote the provisions in relation thereto:

Section 5583, Compiled Laws, Oklahoma, 1893: * * * "In order to make the assessment such assessor shall demand from each person or firm, and from the president, cashier or managing agent of each corporation, association or company within his county, a statement, under oath or affirmation, of all the real estate within the county, and personal property owned by, claimed or in the use, possession or control of such person, firm, corporation or company, whether held by the party sworn for himself or as agent for another, and shall set out in such sworn statement an itemized account of all classes of property, by this act defined as subject to assessment, by him so held or controlled." * * *

Section 5584. "If the owner of any property not listed by another person shall be absent or unknown to the assessor, he shall ascertain and estimate the value thereof, and if the name of such owner be known to the assessor the property shall be assessed in his, her, or their name, etc."

Section 1, Article 5, Chapter 43, Session Laws, 1895: "When any personal property shall be located

in any county of this territory, after the first day of March of any year, which shall acquire an actual situs therein before the first day of September, such property is taxable therein for that year, and shall be assessed and placed on the tax roll, and the tax collected as provided by this act."

Section 2. "Whenever any live stock shall be located in this territory for the purpose of grazing, it shall be deemed to have acquired an actual situs therein as contemplated by this act."

Section 3. "When any person, association or corporation shall settle or organize in any county of this territory, and bring property therein after the first day of March and prior to the first day of September, in any year, it shall be the duty of the assessor to list and return such property for taxation for that year, unless the owner thereof shall show to the assessor, under oath, that the same property has been listed for taxation on that year in some other state, or county in this territory, etc."

Section 1, Article 6. * * * "That when any cattle are kept or grazed, or any other personal property is situated in any unorganized country, district or reservation of this territory, then such property shall be subject to taxation in the organized county to which such country, district or reservation is attached for judicial purposes, and the Board of County Commissioners of such organized county or counties to which such unorganized country, district or reservation is attached, shall appoint a special assessor each year, whose duty it shall be to assess such property thus situated or kept; such special assessor shall have all the powers and be required to perform all the duties of the township assessor. * * *

Any person who feels aggrieved by his assessment in any such country, district or reservation, may appear before the Board of County Commissioners for the organized county to which such country, district or reservation is attached for judicial purposes, at their session, commencing on the first Monday in June, and the Board of County Commissioners shall have power to correct any and all errors, etc."

Prior to 1897 assessments in the organized counties were made by the Township Trustee of each Township, under the provisions of Compiled Laws 1893, section 6061.

Section 6061. "The Township Trustee of each municipal township in this territory shall be, by virtue of his office, the assessor of his township, and shall give an additional bond to the one already required by law for the faithful performance of his duties as such assessor."

Article 7, Chapter 32, Laws 1897. Section 1. "The Boards of County Commissioners of the various counties of the Territory of Oklahoma are hereby empowered to correct, either upon the assessment rolls or upon the tax rolls of the county, any double or erroneous assessment of property for taxation for any particular year in the manner provided in the next section, and not otherwise; provided, that this act shall in no wise be construed as a grant of power to Boards of County Commissioners to equalize valuations of property for taxation, as between individuals."

Section 2. "Whenever, at either of the regular meetings of the said Boards in January, April, July

or October, upon complaint of the person or persons beneficially interested, their agent or attorney, it shall be made to appear by the testimony of the claimant and at least one reputable witness, borne out by the records of the county, that the same property, whether real or personal, has been assessed more than once for the taxes of the same year, or that property, whether real or personal, has been assessed in the county for the taxes of a year to which the same was not subject, the said Board is hereby empowered to issue to the complainant a certificate of error, showing that the complaint has been investigated by said Board, that the said Board has been satisfied of the truth of the allegations of said complaint, and direct the same to the county treasurer of their said counties directing the said county treasurer to accept the said certificate as a payment of cash to the amount found by the said Board to have been unjustly assessed, which said amount shall be named in the said certificate, and shall, by the treasurer, be credited upon his tax roll against the tax so found to be erroneous; and the treasurer shall retain the said certificate and shall be credited with the same as cash in his settlement as such treasurer."

Article 10, Chapter 32, Laws 1897. Section 1. "That Section 1 of Article 5, Chapter 43, of an act approved March 8th, 1895, be, and the same is hereby amended so as to read as follows: Section 1. When any personal property shall be located in any county of this territory after the first day of March of any year, which shall acquire an actual situs therein before the first day of September, such property is taxable therein for that year, and shall be assessed and placed upon the tax roll and the tax collected as

assessor to give, under oath or affirmation, the statement required by this section, the assessor shall ascertain and estimate from the best information he can obtain, the number, amount, and cash value of all the several species of property required, and shall list the same accordingly, and the value so fixed by the assessor shall not be reduced by the county board of equalization."

Section 1, Article 2, Chapter 28, Laws 1899. "That from and after the passage and approval of this act no taxes shall be assessed, levied or collected in any unorganized country, district or reservation which shall be, or which may hereafter be, attached to any county for judicial purposes, except for the territorial and court funds."

These various statutory provisions, while applicable to the motion to dismiss, by showing the application of the facts set forth in the petition for injunction, and the various questions of both law and fact raised by the allegation in reference to the rights of the individuals who have joined their complaints in one petition, will also be convenient for reference in connection with the brief upon the merits.

BRIEF AND ARGUMENT ON MERITS.

The facts and matters of contention are so fully set forth in the petition for injunction and the opinion of the court that it is unnecessary to further enlarge this brief with them.

In so far as the opinion of the court complained of on this appeal deals with the validity of the law of the territory passed in 1899, and complained of by appellants herein, we have little to complain of, but there are several matters raised in the petition for injunction which are constantly arising, and are now pending in a large number of cases in the courts of the territory, which cases are being continued from time to time awaiting the disposition of this case.

The learned Judge who delivered the opinion of the Supreme Court of the territory concludes, from the decision of this court in the case of Gay vs. Thomas, 169 U. S., 264, that the reservations in question form a part of the same taxing district as the county proper, but we do not agree that such is the proper interpretation of that decision. The language of the act attaching these reservations to organized counties "For Judicial Purposes" contains its own limitations. It is certainly true that the legislature of the territory have power to levy taxes upon property in these reservations, but we do not think that it necessarily follows that they become a part of the same taxing district.

We disagree with the court again in the matter of the repeal of the act of 1895 in reference to the appointment of special assessors to assess property in

the reservations. The act of 1897, creating the office of county assessor and defining his duties, does not, in express terms, repeal the special assessor act, and there is not the slightest conflict between the provisions of the two acts.

These various statutory provisions upon the subject of taxing property in the reservations were all before the legislature of 1897, and if they had desired to repeal the special assessor act it would have been an easy matter to have said so. The laws of 1893, by reference and the terms of the special assessor act, became a part of that act as fully as though each and every provision had been repeated in the latter act. The repeal of those provisions in relation to township assessors did not repeal by implication or otherwise the later law into which they had been enacted. As there is not the slightest conflict between the two laws—the Special Assessor Act of 1895 and the County Assessor Act of 1897—we fail to see why there should be a repeal by implication. The legislature did not repeal the act of 1895, they did not intend to repeal it, and they passed no law in conflict with its terms or purpose. In view of these facts we see no occasion for a repeal by the court.

Many important questions presented by the petition and in the petition in error in the Supreme Court of

the territory are ignored in the decision complained of here. This is probably largely due to the fact that two cases were considered together and these questions were not common to both cases. We present these questions for consideration by this court on account of their importance and the large number of pending cases involving the same questions.

If the county assessor had no authority to assess the property in the reservations, then the assessment was void and the entire tax should be enjoined.

Relying upon every ground for injunction stated in the petition, we submit further suggestions without regard to arrangement.

In Cooley on Tax, 2d Ed., 352-353, it is said:

"The assessment being so important, the statutory provisions respecting its preparation and contents ought to be observed with particularity. They are prescribed in order to secure equality and uniformity in the contributions which are demanded for the public service, and if officers, instead of observing them, may substitute a discretion of their own the most important security which has been devised for the protection of the citizen in tax cases might be rendered valueless. Assessments must therefore be made by the proper officers or it will be void; and if a board of review which has power to appoint

the assessors and afterwards review their work should appoint any of their own members to that office, the appointment would be void and an assessment made by the appointees illegal.

"The assessment must be made by the officers duly elected or appointed for that purpose, and it is especially essential to its validity, the validity of the list as a basis of taxation, and therefore to the validity of the tax itself, that the assessment should be made by the officer having competent authority and the qualification, required by law."

25 Enc. Law, 202.
Republic L. Ins. Co. vs. Pollock, 75 Ill., 292.
Street R. Co. vs. Surrell, 88 Ill., 535.
Felamthal vs. Johnson, 104 Ill., 21.
People vs. Lots in Ashley, I22 Ill., 297.
Twombley vs. Kimbrough, 24 Ark., 159.
People vs. Hastings, 29 Cal., 449.
People vs. White, 47 Cal., 616.
Reily vs. Lancaster, 39 Cal., 354.
Hawkins vs. Jonesboro, 63 Ga., 527.
Williams vs. Corcoran, 46 Cal., 553.
Evansville, Etc., R. Co. vs. Hays, 118 Ind., 214.
People vs. Lathrop, 3 Col., 428.
St. vs. Segoine, 53 N. J. L., 339.

Hoffman vs. Woods, 40 Kan., 382, (19 Pac., 805.)
Rood vs. Mitchell County, 39 Ia., 444.
Bailey vs. Fisher, 38 Ia., 229.
Du Page County vs. Jenks, 65 Ill., 275.
Paldi vs. Paldi, 84 Mich., 346.
People vs. Parker, 117 N. Y., 86.
People vs. Ward, 105 Ill., 620.
Payson vs. Hall, 30 Me., 298.
Pike vs. Hanson, 9, 491.
Syman vs. Anderson, 9 Neb., 367.
Wadleigh vs. Maranthon Co. Bank, 58 Wis., 546.
Toby vs. Haggarty, 23 Ark., 370.
Campbell vs. Mulford, 20 N. J. L., 49.
Taylor vs. Youngs, 48 Mich., 268.

Where the assessment upon which the sale of lands for taxes is based was made by the officers of the town in which said lands were not and never had been situated, and whose officers had never before exercised any jurisdiction over the lands, the deed issued upon said sale is void and the statute of limitations cannot be invoked in its support.

Wadley vs. Warton Co. Bank, 58 Wis., 546.
Cooley on Taxation, 352.
Thurston vs. Little, 3 Mass., 429.

Thayer vs. Starns, 1 Pick., 482.

Miller vs. Hale, 26 Pa. St., 432.

Matter of Nichols, 54 N. Y., 62.

Driggins vs. Casherly, 71 Ala., 529.

Early vs. Whittingham, 43 Ia., 162.

Quiney vs. Lawrence, 1 Idaho, 313.

Waller vs. Hughes, 11 Pac., 127.

Parker & White vs. Overman, 18 Howard, 137, 59 U. S.

Book 15 L. E., U. S., 318.

March vs. Supervisors, 42 Wis., 502.

From the decisions cited it appears that statutes in reference to assessments of property are mandatory, and if they have not been substantially complied with the levy based thereon will be void.

In Gray vs. Stiles, 6 Okla., 513, the Supreme Court of the Territory says:

"Assessment is the same as valuation of the property taxed, and this assessment or valuation must be made by the officer or officers to whom it is by the statute expressly committed; that the duty and function of assessment cannot be shared in by any officer to whom it is not so granted by the very language of the statute."

If J. H. Nelson, as county assessor of Noble County, did have the power and authority to assess the property of plaintiffs situated in Ponca and Otoe

Reservation, without appointment and qualifications as special assessor, was it necessary for him to view the property and estimate its value and give plaintiffs an opportunity to show any reason why the same should be exempt from taxes?

The decisions of our Supreme Court, as we understand them, are not entirely in harmony upon this proposition. They appear to have treated the statutes of this territory governing assessors as directory only, and reach the conclusion that any amount or all of the statutory direction could be ignored without affecting the validity of the assessment or the levy of taxes thereon.

If the statute of the territory had been complied with in reference to viewing the property and demanding a list thereof, an opportunity to show exemption would have been presented to plaintiffs. We believe that the legislature, in passing the act referred to in reference to exemptions of property from taxation, which had been taxed for the same year in another county or state, had in mind the provisions of other statutes with reference to the manner of making assessments, and supposed that opportunity would be furnished to all the property owners to take advantage of the exemption specified.

The general statutes of the territory in reference to assessments should be construed as a part of the law under discussion.

General Section 5583, Laws of 1893, provides:

"In order to make the assessment, such assessor shall demand from each person and firm, and from the president, cashier, treasurer or managing agent of each corporation or association or company within his county, a statement, under oath or affirmation, of all the real estate within the county and the personal property owned by, claimed or in the use, possession or control of such person, firm, corporation, association or company."

Section 5584 provides:

"The list shall be signed and sworn to by the person making it and the oath thereto may be administered by the assessor or his deputy."

Section 5586 provides:

"All property is to be valued to the assessor by the person whose duty it is to list the same."

By section 5585 the assessor is required to return a list of the personal property statements, and in connection therewith is required to make oath as follows:

"And in no case have I omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property, which he was required by law to list."

Section 5589 provides:

"Every inhabitant of this territory of full age and sound mind * * * shall list all property subject to taxation in this territory of which he is the owner * * *"

The act of March 5th, 1895, session laws, 1895, 232, which provides for the assessment and taxation of property located in territory attached for judicial purposes provides:

"* * * Such special assessor shall have the powers and be required to perform all the duties of the township assessor * * *

Session laws, 1895, page 230, which provides for the assessment of transient property contains a provision to the effect that the assessor shall list all property for taxation, unless the owner thereof shall show to the assessor, under oath, that the same property has been listed for taxation, for that year, in some other state or county of this territory. If these statutory provisions are construed together, it will be an easy matter for the assessor to ascertain, in the manner provided by law, what property is exempt from taxation. It is not necessary to this contention to say that the plaintiffs were not exempt from taxation, nor their property which had been taxed for the same year in another place. The first question to be determined is, are these statutes to govern the

assessor, or is the assessor to govern these statutes? If no harm has been done plaintiffs in this case, by reason of the fact that they have no rights to be protected, as claimed in their petition, the question still remains, what would be the result to those who have rights to be protected if the statutory requirements are ignored? If the tax levy complained of is void, because the property was not assessed in the manner prescribed by law, it is immaterial that the property might be subject to taxation if legally assessed.

In addition to other statutory provisions in reference to the method of assessing property, Section 1, Article 6, laws of 1895, page 233, contains this provision:

"That in case said property at any time has by oversight or neglect, or for any other cause, been irregularly, illegally or defectively assessed, it shall be lawful for the special assessor to assess or reassess the same, as the case may be, and when done the same shall be valid for all intents and purposes, and in performing his duties under this section he may make out his assessment rolls or list from the best evidence attainable."

It may be contended by defendants in error that the general statutes of the territory, with reference to assessments, are not controlling in a case like the

present by reason of the provisions just quoted. In order for the court to say such a contention states the law, it will be necessary to hold that this provision by implication repealed all other statutes on the subject. The act just quoted from does not pretend to repeal anything, and if the legislature had intended to repeal the various other statutory provisions some special or general repealing clause would have been enacted. Repeals by implication are not favored in law; and by construing this statutory provision to mean that in the event that the amount and value of the property cannot be ascertained by methods otherwise provided, the assessor may make out his assessment rolls from the best evidence attainable, as parts of the law are in harmony.

The statute quoted seems to provide that the special assessor may resort to other means to ascertain the amount and value of the property only in cases where "oversight or neglect, or for any other cause property has been irregularly, illegally or defectively assessed," and such appears to us to be the meaning of the statute. However, if the words quoted have the general application to the entire section, it was clearly not the intent of the legislature to repeal the other statutes directing the manner of assessing property and such a construction should not be resorted to

unless the language used is so clear and positive as to admit of no possibility of harmonizing the same with the other statutory provisions; and especially is this so in view of the fact that it was clearly not the intention of the legislature to repeal the other statutes.

As to the necessity of conforming to the statutory demand in assessing property, see authorities cited to our first proposition; also,

Waller vs. Hughes, 11 Pac., 122.

Hersey, et al, vs. Board of Supervisors, Barren Co., 37 Wis., 75.

Schettler vs. City of Ft. Howard, 43 Wis., 48.

Cooley on Taxation, 2nd, Ed., 284.

Powder River Cattle Co. vs. Board of County Commissioners, 45 Fed. Rep., 323.

In the last case cited the language of Chief Justice Wade is quoted as follows:

"Under the provisions of our statute it is the first duty of the assessor to demand a list of the property from the taxpayer of the person whose property is to be assessed. This is the first and important step towards assessing his property for taxation. If the list is not furnished on such demand, then, and not until then, has the assessor the right himself to make a list and value the property. The demand is a con-

dition precedent to the right of the assessor to act in the premises. That, and the neglect or refusal of the person having taxable property, alone, gives the assessor the right to make the list himself. If this were not so the sovereign power of taxation becomes an arbitrary exaction, subject to the caprices of a single individual, without the knowledge and behind the back of the person most interested and whose property is to be taken for the public use. Therefore, it is that our statute has wisely provided that the person having taxable property shall have the right to list the same for taxation. The assessor has not the right or jurisdiction to make a list until the tax-payer or person having the property subject to taxation has neglected or refused to make it. * * * " "When the regulations prescribed are intended for the protection of the citizen and to prevent the sacrifice of his property, and by the disregard of which his rights might be, and generally would be, injuriously affected, they are not directory but mandatory." French vs. Edwards, 13 Wall, 506. "The failure to make a demand of the tax-payer for a list of his property might, and generally would, injuriously affect his rights, for if the tax-payer must list the property, whether any demand for the same has been made upon him or not, then the assessor may, on mere information and belief, list his

property and add 20 per cent of the full value thereof, * * * certain the law that requires a demand to be made of the taxpayer for his list of property is intended for his protection, is therefore a mandatory statute." See also N. Pac. R. vs. Corland, 3 Pac., 134; State vs. Nunn, 39 N. J. L., 422.

If the statutes referred to are mandatory, the reason for the statute is immaterial; but in addition to the reasons given for the cases before cited, we have another, or state an additional one, that the taxpayer in some cases has a right to show to the assessor, under oath, that his property has been assessed in some other state or county. If these reasons make the statute in regard to assessment mandatory, it is no excuse for ignoring them that in many cases no injury would result.

Section 1, Article 6, Laws of 1895, 233, also provides:

"That such special assessor shall have all the powers and be required to perform all the duties of the township assessor."

These reasons, in addition to other suggestions offered, make it clear beyond doubt that it was not the intention of the legislature, by the language previously quoted from this section, to repeal all other

statutory directions in reference to making assessments.

It is probably unnecessary for the court to go to the extent which the law seems to demand by holding that assessments in every instance, is void unless the statutory directions for making the same are complied with. Such would doubtless be the better manner of disposing of the case. It would certainly be wiser to leave it to the law making power of the territory, the legislature, to say how the property of the citizens should be assessed, than to leave it to the arbitrary will, whim, or discretion of the various assessors throughout the territory. It is sufficient, however, in the present case to say that a substantial right was denied the plaintiffs, by the failure of the assessor to comply with the statutory command and direction.

Was the property of the plaintiff liable for taxation in Noble county for the year 1899, after taxes had been paid thereon for the same year in the state of Texas, provided it had been shown to the assessor by proper affidavits and proof, that the same property had been so taxed for that year?

It has been contended in similar cases in this court that the provisions of Section 3, Article 5, Laws

of 1895, page 230, do not apply to non-residents of the territory, and this appears to be the only objection that can be urged against our proposition.

This contention from the other side has also been continued by further contention that these reservations are, in effect, a part of the county to which they are attached for judicial purposes, and therefore the law of 1899 exempting property in reservations from taxation, except for court and territorial purposes, is an unlawful discrimination and therefore void. In other words, the contention seems to be that the provisions of Section 3, Article 5, Laws of 1899, do not apply to property situated in Indian Reservations, because they are not a part of the county, and that the provisions of the law of 1899 are illegal and void, because the reservations are a part of the county. The contentions do not appear to us to be in harmony with each other. We admit that the general legislation of the territory, with reference to taxing property in reservations, indicated that the legislature has always considered and dealt with them as separate and distinct taxing districts. But, notwithstanding this fact, there is nothing in section 3 referred to to indicate that the legislature did not intend to use the word "county" in a comprehensive sense, and that was no reason why the language of

the section should be so strictly construed as to exclude property situated in reservations attached to the county for judicial purposes. The machinery for taxing property in these reservations is all provided for in the counties to which they are attached for judicial purposes, and the strict construction contended for would have the effect of exempting property from double taxation when situated in the county proper, and require the same class of persons and property, when situated in a reservation attached for judicial purposes, to bear the burden of double taxation.

Section 6, of the same act, provides:

"When any person is about to remove his property from the county after the same has been assessed, and before the taxes thereon have been paid, without leaving sufficient remaining for the payment of the taxes thereon, the taxes shall at once become due and payable and the treasurer shall issue a tax warrant for the collection of the same, and it shall be enforced as in other cases."

This section has, so far as we are informed, always been construed to include property situated in unorganized territory attached to the county for judicial purposes, and it would require a strict construction, and one which would result in great inequality and damage to the county, to say that section 6, as well as many other provisions of the same act, do not

apply to unorganized territory attached for judicial purposes.

Article 6, page 235, Laws of 1895, makes no provision with reference to the collection of taxes on property in unorganized territory, except that "the officer whose duty it shall be to collect the taxes in the organized county to which such country, district or reservation is attached shall collect the taxes, and is vested with all the power which he may exercise in the organized county." These two acts being passed by the same legislature, it appears to us evident that the word "county," as used in article 5, was intended, and does include, "reservations," and that the legislature intended the same method of collecting taxes and exempting property from taxation on reservations as applied in organized counties.

If the property of the plaintiffs was not liable for taxes in said county for the year 1899 (if proper proof had been made that the same property had been taxed for that year in the state of Texas), were the plaintiffs denied their exemption from taxes by reason of the failure of the assessor to view the property, or to give them any notice that he intended to assess the same, or to appear and present their proof that the property had already been taxed?

It appears to us evident that the assessor would have no power to deny the plaintiffs their statutory rights of exemptions from taxation, if such rights in fact existed, and we assume that our fourth question answers itself. However, the question here involved is discussed in Cooley on Taxation, 2nd Ed., page 361, where the principle is thus stated:

"It is not very often the case, however, that statutory provisions in reference to assessments are not strictly observed and that either the public or individuals will suffer in consequence. The question presented may then be whether the provisions which have been disregarded are mandatory of the officers or it might arise in the terms of some purity of statute which undertakes to heal the defects. In substance, the question will be whether the right to be heard in tax cases is a constitutional right and indefeasible. Upon this subject there is a generai concurrence of authorities in the affirmative. It is a fundamental rule that in judicial or quasi-judicial proceedings affecting the rights of the citizen he shall have notice, and be given an opportunity fo be heard before any judgment, decree, order or demano shall be given or established against him,"

That the assessment of property for taxation is a quasi-judicial proceeding, is, we believe, admitted by all authorities, and it is universally held that not even the legislature can take from the tax-payers the right to a hearing.

In Steward vs. Farmer, 74 N. Y., 183, the court says:

"The legislature cannot more arbitrarily impose assessments for which property may be taken and sold, than it can render a judgment against a person without a hearing. It is a rule founded on the first principles of natural justice older than writen constitutions that the citizen shall not be deprived of his life, liberty or property, without an opportunity to be heard in defense of his right. * * * It has always been the general rule in this country, under every system of assessment and taxation, to give the person to be assessed an opportunity to be heard at some stage of the proceeding. That due process of law requires this has been universally recognized."

In railroad tax cases, 13 Fed. Rep., 722, in refering to taxing a charge upon property by assessment for taxation Mr. Justice Field says:

"The law directing the proceeding must provide for some kind of notice and offer to the owner an opportunity to be heard, or the proceeding will want the essential ingredients of due process of law."

Hager vs. Reclamation Dist., 111 U. S., 701.

In Exchange Bank Tax case, 21 Fed. Rep., 99, the court says:

"In the act of 1881, chapter 271, laws of N. Y., the fatal vice was the denial of an opportunity to those assessed to be heard and permitted to obtain the deductions and corrections allowed by the general system of assessment."

In Thompson vs. Gains, 35 Mich., 155, the court says:

"* * * But it follows legitimately from this that parties taxed must have an opportunity to be heard regularly at some stage in the proceeding. Their rights are not to be concluded by proceedings which are wholly ex-parte."

Butler vs. Supervisors, 28 Mich., 22.

Hills vs. Exchange Bank, 105 U. S., 319.

Moore, et al., vs. Hewett, 16 N. E., 905.

We contend that plaintiffs, not only had the right to a hearing at some stage of the proceeding, but that they had the right to the hearing described by the laws of this territory, and that the assessor had no power to disregard these laws, to fix some other time or manner of such hearing. Plaintiffs had the right to expect that the assessor would call upon them and demand a list of their property. The Board of County Commissioners had no power to make an assessment in the first instance, and even though they are given the power to correct errors in assessments these provisions should not be construed so as to authorize a total disregard of the statutory provisions on the subject of assessment of property for taxation. In this case it is no answer to our contention to say that the plaintiffs had a right to appear before the Board of

County Commissioners and have their assessments corrected, having them extended or placing of their property upon the tax rolls. They did appear before the Board of County Commissioners, and upon their request and showing made their property was stricken from the tax rolls as not properly assessable. This hearing, however, amounted to no hearing, because the board, at a subsequent time, and without notice to the plaintiffs or their presence, and without their knowledge, rescinded their action and reaffirmed their former action and the action of the assessor in placing the property of the plaintiffs upon the tax roll, without making any assessment as provided by law. This last proceeding of the Board of County Commissioners, like the proceeding of the assessor, was purely *ex parte*, and the first information which plaintiffs had of this *ex parte* proceeding was the levying upon their property under a tax warrant, issued for the collection of the taxes so assessed and levied, without any opportunity for a hearing, and without a pretense of compliance with any statute of the territory with reference to assessing property.

The property of the plaintiffs has been assessed by a person wholly unauthorized to make the assessment. Every statutory provision with reference to

the mode and manner of making the assessment has been ignored. Plaintiffs have been denied the right to show that their property was not subject to taxation, or the quality and value thereof, as well as many other substantial rights and which would have been fully protected by proceeding in conformity with the statutes, including the right to appeal from the action of the Board of County Commissioners.

If this manner of assessing property and levying taxes is presumed to be under our statutory regulations, then it is not necessary that property should be assessed by an assessor elected or appointed as provided by law, or that the property owner should be requested to give a list and valuation of his property, or that the assessor make return and affidavit of the assessment sheet as directed by statute, or that the tax-payer should have an opportunity for a hearing at any stage of the proceedings, or the right to appeal to a court from the illegal or oppressive acts on the part of the Board of County Commissioners.

These suggestions dispose of our fifth contention, and brings us to the sixth proposition.

Was the property of the plaintiffs situated in the Indian Reservations liable for taxes for the year 1899 in Noble County for purposes other than Court and Territorial funds?

The act of March 10, 1900, provides as follows:

"That from and after the passage and approval of this act, no taxes shall be assessed, levied or collected in any organized county, district or reservation which shall be, or which may hereafter be, attached to any county for judicial purposes, except taxes for Territorial and County funds."

It is evident, that, if the act of March 10, 1899, is valid, that the property of the plaintiffs in error is not subject to taxation except for territorial and county purposes.

It seems to us to be equally evident that if the legislature possessed the power, in the first instance, to levy taxes in the Indian Reservations, that it must likewise possess power to say what kind and character of property should be subject to taxes, and for what purpose it should be taxed.

This act must stand as a valid exercise of legislative authority, unless it is apparent that it contravenes some constitutional or fundamental rule of law, for, in cases of doubt, it is a maxim of law that the doubt must be resolved in favor of the validity of the act, and that it will not be held to be null and void unless it is clearly so. That the legislature had the power, in the first instance, to enact the law assessing property in the Indian Reservations and declaring it subject to taxation, is not disputed, but on the con-

trary it is admitted by the plaintiffs in error; and a subsequent act declaring for what purposes it should be taxed is equally valid, unless it be held that the Indian country attached to organized counties for judicial purposes became, *ipso facto* part of the county to which they were so attached.

The county lines in the Territory of Oklahoma are laid out and prescribed in the acts and proclamations opening the territory to settlement. In the Organic Act, it is provided that these county lines may be changed by the legislature at its first session. No such power is found in the act opening the Cherokee Strip to settlement, and Noble County is a part of the Cherokee Strip, and to this county the reservations in which these taxes were levied was attached for judicial purposes by order of the Supreme Court. If this country, by virtue of being attached to Noble County became a part of the county, the act of March 10, 1899, may be invalid for the reason that it does not provide a uniform system of taxes for the whole of the taxing district, and the test of the validity of the act will be found in deciding whether said Indian country is in fact a part of Noble County, or whether, under the law, it constitutes a separate taxing district.

It will be observed that the purpose which the

Supreme Court is authorized, by the Organic Act, to attach unorganized Indian country to the organized counties of the territory is for judicial purposes. It cannot be inferred that congress, by a grant of this power to the Supreme Court, intended thereby to give the Supreme Court power, *ad libitum*, to change the boundaries of the organized counties of the territory, by attaching or detaching Indian country to said counties at each term of the Supreme Court. Even if the legislature possessed the power to change the boundaries of the counties of the territory, under the grant to it of all "subjects of rightful legislation," it is sufficient for the purposes of this argument to say that the legislature has not seen fit, in the case at bar, to exercise that power; and, so, if the Indian Reservations in question in this case are a part of Noble County for any purpose, it becomes so by virtue of an order of the Supreme Court attaching them to said county for judicial purposes, and if that order makes them a part of said county, it is at once evident that the Supreme Court can, at pleasure, extend or contract the boundaries of any of the counties in the Territory of Oklahoma, by making an order attaching Indian country to them for judicial purposes.

It is contended by plaintiffs in error that the leg-

islature, itself, under the grant in the Organic Act to change the boundaries of the seven original counties of the Territory of Oklahoma and the grant in the Organic Act to pass laws on "all rightful subjects of legislation," does not possess the power to, and could not extend the boundaries of any county so as to include unorganized Indian country within the boundaries of any county, so as, in fact, to make said Indian country a part of the county.

In Thomas vs. Gay, 169 U. S., 264-284, the Supreme Court of the United States says:

"The Organic Act, as we have already seen, extends the exterior boundaries of the territory around these Indian Reservations. It also provided for the division of the territory into council and representative districts and for the election of the legislative assembly and delegate to congress. The Indian Reservations were not included within any of the council or representative districts. The act provided that there should be seven counties and fixed the county seats, and under the authority of the act the governor established the boundaries of these counties. The legislature was authorized to change the boundaries of the original counties, but were not given authority to include these reservations or any lands not then open to settlement in any of the counties."

If the grant of power to the legislature, contained in the Organic Act, did not authorize it to include Indian country in the boundaries of any county, it

can hardly be contended that the power granted to the Supreme Court, by the Organic Act, to attach unorganized country of the Indian Reservations to the organized counties for judicial purposes, conferred power on the court to make the country so attached a part of the county to which it was attached. So it is evident to us that it cannot be successfully contended that this portion of the Indian country so attached to Noble County became a part of Noble County; hence it must remain a separate taxing district, and if it is a separate taxing district the act of March 10, 1899, is valid, for different rules of taxing can be established in different taxing districts, without violating the rule that the taxation must be uniform. This rule of uniformity is only violated when taxation is not uniform within the district in which taxes are levied and assessed and the law creating them is to operate.

In Thomas vs. Gay, *supra*, it is said:

"Without undertaking to enumerate all the instances in which there is some difference of procedure in respect to property assessed within the organized counties and the property assessed in the unorganized districts and reservations, or to consider minutely the several objections that are urged to such differences, we do not perceive that the questions suggested are for the courts. Clearly, these are mat-

ters of detail within the legislative discretion. It is the law-making power which is to determine all questions of discretion or policy in apportioning taxes; must make all rules and regulations and decide upon the agencies by means of which the taxes are to be collected."

It was, clearly, then within the power of the law-making body in this case to determine what proportion of the burdens of taxes that property situated in the Indian Reservations should bear, and the legislature in determining that question seems to have done so on the lines of natural justice. The act of March 10, 1899, only makes property in these reservations bear their proportion of the burdens of that part of the territorial and county governments from which they derive some benefit in the protection of their property and in the maintenance of their rights.

It seems that the legislature in passing this act knew that the people in these reservations did not, and could not, receive any benefits from the other funds for which this property was made subject of taxation in organized counties, than court and territorial funds, and for this reason they should be exempt from the burden of paying taxes for the funds from which they could derive no direct and immediate benefits.

As said, before, the act of March 10, 1899, is a

valid exercise of legislative power and discretion in the levying and assessment of taxes, if that reservation is a seperate taxing district. These reservations enjoy none of the blessings of the county governments, and no necessity, therefore, exists for taxing the owners of property located in said reservations for the general purposes of establishing and maintaining county government. In these reservations no provisions of law exists, or have ever existed, providing for township governments, for the organization of school and road districts, or for the establishment of villages, towns and cities; and hence, the legislature did not see fit to make the property therein located subject to taxation for these purposes, when from them the residents and tax-payers of said district did not derive any benefits.

But this reason does not apply to the two funds for which taxes are authorized to be levied on property in said districts. The inhabitants of said district receive here the same benefits from the general laws of the Territory of Oklahoma in the protection of their rights to person and property that the inhabitants of organized counties do; and the courts established in organized counties are as freely open to the inhabitants of the unorganized Indian country as they are to the inhabitants of the organized county. And

for this reason the legislature deemed it right and expedient that the inhabitants of these reservations should bear their proportion of the taxes in supporting the burdens of territorial government and in the administration of justice.

The legislature is the sole power to designate and establish taxing districts; and it is beyond the power of the court to interfere with this right of the legislature. The legislature must be left to a free exercise of this right and to the methods by which it arrives at its conclusions.

In Cooley on Taxation, page 149, it is said:

"When the nature of the case does not conclusively fix it the power to determine what shall be taxing districts for any particular burden, is purely a legislative power, and not to be interfered with or controlled, except as it may be limited or restrained by constitutional provision. The 'Judicial tribunal,' it has justly been said, 'cannot interfere with the legislative discretion, however onerous it may be.' And when it was objected that a certain construction of a a statute would throw upon one locality the expense of constructing a road for state purposes, 'the conclusive answer' was declared to be 'that the state may impose such a burden where, in the wisdom of the legislature, it is considered that it ought to rest.' * * * * The legislature judges finally and conclusively upon all questions of policy, as it may also upon all questions of fact, which are involved in the deter-

mination of a taxing district. And, having the authority to determine what shall be taxing districts, the legislature must also be left to its own methods of reaching the conclusion."

It is further said, by the same learned author, that taxing districts may be as numerous as the purposes for which taxes are levied.

People vs. Brookley, 4 N. Y., 419.
Shaw vs. Dennis, 10 Ill., 405.
Philadelphia vs. Field, 58 Pa. St., 320.
Langhorn vs. Roberson, 20 Grat., 661.
Caldwell vs. Connersville, 8 Ind., 358.
Malchus vs. Highlands, 4 Bush, 547.

In Howell vs. Buffalo, 37 N. Y., 267, the court, by Justice Parker, say:

"The legislature was not bound to apportion the taxes among the taxable persons within the city, but might, according to its own view of justice and right, proportion the whole among a part of such persons."

In Hill vs. Higdon, 5th Ohio St., 243, it is said:

"The right to tax for such a purpose necessarily includes power to determine the extent and upon what property the taxes should be levied, and that its imposition upon the property, practically and substantially benefitted by the improvements, was but a lawful exercise of the discretion with which the legislative body was invested in apportioning the taxes."

In People vs. Whyler, 41 Cal., 351, the court, by Chief Justice Rhodes, say:

"A tax is equal and uniform when it reaches and bears with like burden upon all the property within the given district, county, etc. It bears the like burden when the valuation of each parcel is ascertained in the same mode—the mode prescribed by law—and when it is subject to the same rate of taxation as other property within the district, county, etc. Absolute equality is unattainable, and the benefits derived or to be derived from the expenditure of the tax cannot be taken into account."

In Coburn vs. Richardson, 16 Mass., 213, the court, by Chief Justice Parker, say:

"Numerous are the inconveniences and great is the injustice which may flow from the statute. But it is for the legislature alone to determine whether these are, or are not, counterbalanced by any great public good which may be expected to be produced by it."

In Comer vs. Folsom, 13 Minn., 219, the court, by Chief Justice Wilson, say:

"It is generally true that a city, town or county, in expending money for the advancement of its own local interests, either directly or indirectly benefits some other sub-division of the state. If it builds a road or bridge, or aids in building a railroad, or in making any other public improvement from which benefit to itself it expected to accrue, frequently some other sub-division of the state is directly and equally benefitted; but it has not been considered that this would be a legal objection to an appropriation of tax

for such improvement. If our constitution requires absolute or perfect equality in taxation, such objection would perhaps have to be admitted. But perfect equality is not required, nor is it possible. All taxes 'should be as nearly equal as may be' in the language of the constitution. If the taxes imposed are distributed on just principles applicable alike to all for whose benefit the appropriation was made or intended, substantial equality is attained, and no constitutional right invaded."

In Marshal vs. Doniphan, 10 Bush, 631, the court, by Justice Lindsey, say:

"As a general proposition, taxation to be constitutional must be as nearly as practicable equal and uniform. To that general rule, however, there are well recognized exceptions. When all are alike benefitted by the taxation, the burden should be a common one; but when the benefits are special and peculiar, the contributions may be so made as to exempt from taxation those persons who are by the law itself, excluded from all participation in the advantages which are expected to arise from the system, institution or improvement to the establishment, construction or maintenance of which the money raised is to be appropriated.

In Cooley on Taxation, page 152, it is said:

"It is not essential that the political districts of the state shall be the same as the taxing districts, but special districts may be established for special purposes wholly ignoring the political divisions. A school district may be created of territory taken from two or more townships or counties, and the benefits of

a highway, levee, or a drain may be so peculiar that justice would require the costs to be levied either upon part of the township or county, or upon parts of several such sub-divisions of the state. In some states there may be township governments within a city, or a city within the bounds of a township, and the fact will create a necessity for special taxing districts, since otherwise taxation for some local purpose could not possibly be properly apportioned. And railroads which extend through several of the ordinary taxing districts may seem to require districts specially created, and having regard to no other property. It is compulsory that the political divisions of the state shall be regarded in taxation only where the tax itself is for a purpose specially pertaining to one of them in its political capacity so that, as already stated, the nature of the tax will determine the district. Even when the purpose for which a tax is demanded pertains to the state at large, or to one of its divisions, so that a general levy throughout the state or such division is essential, there may be peculiar reason why a part of the general public, who are concerned in the purpose, should bear a portion of the burden greater than that which should be borne by the others. A pertinent illustration might perhaps be the case of a tax for the construction of a state capitol. It would be clear, we would say, that such a tax should be spread over the state at large, because the purpose is a state purpose, and every individual in the state is directly interested in its accomplishment. But it is also apparent that the people and the property at the place where the structure is proposed to be constructed would receive special, and probably very great benefits in consequence of the construction beyond

what they would receive in common with all others. The fact is often recognized in the voluntary contributions which are made by the people to secure the location and construction of state buildings at the place where they reside or own property; and the question then arises whether these peculiarities may not constitute a basis for special taxation. To make them such it would be necessary there should be two taxing districts; the one embracing the whole state, and the other embracing only the district which, in the opinion of the legislature, was so peculiarly benefitted as to justify exceptional burden upon its people and property. In such a case the people within the minor district, which is also embraced within the larger district, would contribute twice to the same burden; but this, though apparently a violation of the principles of taxation is not so in fact, if the establishment of the minor district has only equality and justice in view, and if each tax payer, though twice called upon, is by the two assessments only required to pay what, as between himself and the rest of the state, has been found to be his just proportion of the burden, though general in its nature, distributes its benefits unequally."

In the light of the foregoing authorities, it seems to us to be clear that the act of March 10, 1899, does not contravene the rule of uniformity in the levying and assessment of taxes, but merely creates a separate levying district.

It cannot be denied that the people living in and the property located in Noble County, receive a

greater benefit from the general taxes levied than do the people residing and the property located in the Indian Reservations attached to said county for judicial purposes, and hence the necessity and wisdom of separate taxing districts; and, as we have seen, even when part of the people in a particular district are called upon to pay a greater proportion of the taxes than other people residing in the same district, the law is not invalid, where the persons and property subject to the higher taxation receive special or particular benefits arising therefrom that the persons and the property paying a small proportion of the taxes do not share in.

This act seems to us to have been conceived in a spirit of equity and justice to the persons and property residing and located in the Indian Reservations. It takes from their shoulders the burden of contributing taxes for the establishment and maintenance of that portion of the county government from which they derive no benefit, and makes them contribute equally with the people and property in the organized county in maintaining that part of the government from which they derive equal protection and benefit. It is true that the legislature perhaps had power and authority to compel the plaintiffs in error to share in the burdens of maintaining the entire

county and municipal government of Noble County, but it has seen fit to adjust the burdens upon a principle, equitable and just, alike to the organized county and to the unorganized Indian country.

The enforcement of the laws in the Indian Reservations and the protection of property therein is a subject which the inhabitants of that country have as deep an interest in as the inhabitants of the organized county; and thus the legislature has called upon the inhabitants of the Indian country to assist in maintaining by taxation. The inhabitants ot the Indian country have as free access to the courts of the organized counties and to their processes as the inhabitants thereof have, and it is but just and proper that they should be called upon to contribute their proportion in taxes to defray the expenses of maintaining the courts, and the legislature has very properly called upon them to pay taxes for this purpose. It would be unjust to call upon the inhabitants of the Indian country attached to the organized counties to pay road taxes, when the only benefit they would derive from the roads in the organized county would be the right they possess in common with every other person, whether citizen of the United States or an alien, to travel over the roads, and the

legislature, in its wisdom, has very properly seen fit not to burden them with this taxation.

The legislature had the power to make the inhabitants of the Indian country attached to organized counties pay taxes for the maintenance of public schools in the organized counties, but recognizing the fact that the inhabitants of said Indian Reservations derive no benefit from the public schools established and maintained in the organized counties, the legislature, in its wisdom, very properly refrained from imposing the burden of assisting in the establishment and maintenance of schools upon the inhabitants of the unorganized country attached to the organized county; and so it is with each and every one of the funds from which the persons and property of the inhabitants of the Indian Reservations are exempted. In each of them, the inhabitants of said country and the property therein located, receive no direct advantage or benefit, and, therefore, the legislature has not called upon them to assist in maintaining these funds, or to defray the expenses incident to operation of that part of government from which they derive no benefit. In the two funds, in which they have a direct interest, and from which they receive benefits to both their person and property, they are called upon

to contribute.

We believe that a carefnl review of the authorities cited in this brief will, inevitably, lead to the conclusion that the assessment of the property of the plaintiffs in error herein was void, for each and every reason stated in their petition for injunction.

Respectfully,

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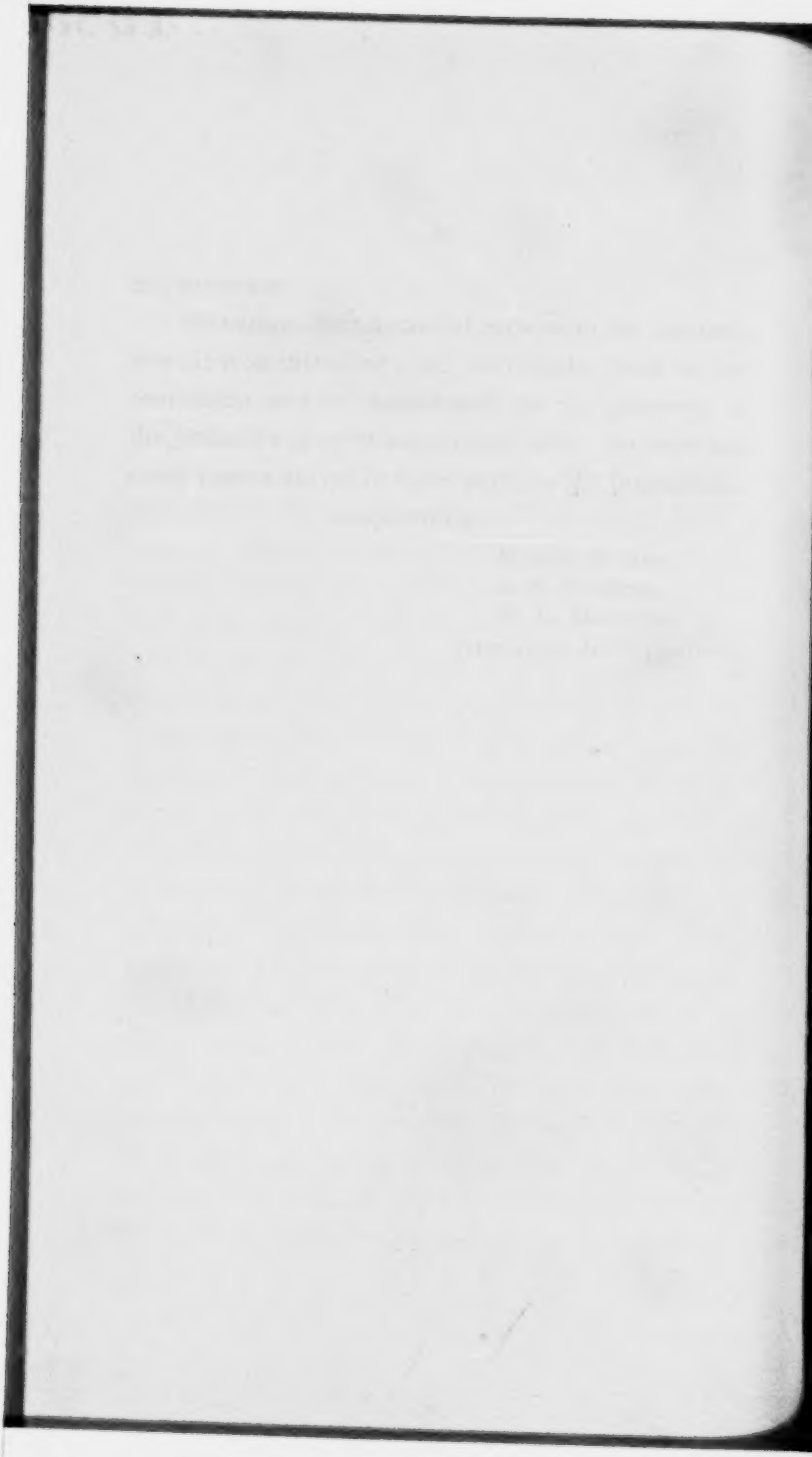

Supreme Court of the United States.

No. 173.—October Term, 1902.

George A. Foster, Sheriff of Noble County, Oklahoma Territory, et al., Appellants, *vs.* I. T. Pryor et al. } Appeal from the Supreme Court of the Territory of Oklahoma.

[April 6, 1903.]

This is an action to enjoin the payment of certain taxes levied upon property belonging to the appellees (plaintiffs below) and situated in an Indian reservation within the Territory of Oklahoma. The appellee, Hite, resides in the Ponca and Otoe Indian reservation within that Territory; the Stafford Land and Cattle Company is a corporation organized under the laws of the State of Texas and doing business in the above-named Territory; and the 101 Live Stock Cattle Company is a corporation organized under the laws of the State of Kansas. The appellees, severally, owned large numbers of cattle which were grazing in the Indian reservation, and they were assessed therein for purposes of taxation by the taxing officer of Noble County, to which such reservation had been attached for judicial purposes. The reservation is without the boundaries of Noble County and is not within those of any organized county of the Territory, and it comprises land owned and occupied by Indian tribes consisting principally of wild, unimproved and unallotted land used for grazing purposes. The reservation was duly attached to the county of Noble for judicial purposes, by order of the Supreme Court of the Territory, pursuant to the provisions of section 9 of the act organizing the Territory, approved May 2, 1890, (26 Stat. 81, 85.)

By article 6, chapter 43, Session Laws of Oklahoma, 1895, it is provided:

"That section 13, article 2, chapter 70, of the Oklahoma statutes relating to revenue, be and the same is hereby amended so as to read as follows: Section 13. That when any cattle are kept or grazed, or any other personal property is situated in any unorganized country, district or reservation of this Territory, then such property shall be subject to taxation in the organized county to which said country, district or reservation is attached for judicial purposes, and the board of county commissioners of the organized county or counties to which such unorganized country, district or reservation is attached shall appoint a special assessor each year, whose duty it shall be to assess such property thus situated or kept; such special assessor shall have all the powers and be required to perform all the duties of a township assessor, and shall give a similar bond and take the same oath as required of such township assessor, and receive the same

fees as a township assessor, and the officer whose duty it shall be to collect the taxes in the organized county to which such country, district or reservation is attached shall collect the taxes, and is vested with all the powers which he may exercise in the organized county, and his official bond shall cover such taxes," &c.

In 1899 (p. 216, Session Laws) the Oklahoma legislature passed an act which provided—

"That from and after the passage and approval of this act no taxes shall be assessed, levied or collected in any unorganized country, district or reservation which shall be or which may hereafter be attached to any county for judicial purposes, except taxes for the Territorial and court funds. All acts and parts of acts in conflict herewith are hereby repealed."

The tax assessor of Noble County being of opinion that the law of 1899 was void for reasons hereafter stated, proceeded to assess for taxation under the act of 1895 (*supra*) the cattle of the appellees which were grazing in the Indian reservation, instead of assessing such property for Territorial and court funds only, as provided for in the act of 1899. The assessment for all purposes was at the rate of 26.2 mills on the dollar of valuation, divided as follows: For Territorial purposes 5.2 mills, for court purposes 3 mills, for salaries 6 mills, for road and bridge fund 2 mills, for sinking fund 4 mills, for poor and insane 1 mill, for supplies 2 mills, for county school fund 2 mills and for contingent purposes 1 mill, making a total of 26.2 mills. If the assessment had been for Territorial and court purposes only it would have been at the rate of 8.2 mills on the dollar of valuation.

The appellees insisted that the taxing officer had no right to assess them upon their property in the reservation at any greater rate than 8.2 mills for Territorial and court purposes, as provided for by the act of 1899, while the appellants contended that the act of 1899 was void, and that the tax assessor had the power, and it was his duty under the act of 1895, to assess the property of the appellees situated in the reservation, for all purposes; or, in other words, for the whole 26.2 mills.

The trial court held in favor of the tax officials and dismissed the petition of the appellees, but upon appeal the judgment of dismissal was reversed by the Territorial Supreme Court and the tax declared invalid for more than 8.2 mills assessed for Territorial and court purposes. The tax authorities have brought the case here by appeal.

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

If the statute of 1899, limiting the right of assessment, is valid, it follows that the judgment of the Supreme Court of the Territory, setting aside an assessment for more than such limited amount, must be affirmed. But it is urged that the act of 1899 is void, and that, being void, the taxing

officer was justified and required by the act of 1895 to make the assessment he did. The grounds upon which the appellants base their claim that the act of 1899 is invalid rest upon the provisions of section 6 of the organic act, approved May 2, 1890, (26 Stat. 81,) and upon section 1 of the act approved July 30, 1886, (24 Stat. 170.)

That portion of the sixth section of the act of May 2, 1890, material to the present inquiry, reads as follows:

"That the legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States, but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents, nor shall any law be passed impairing the right to private property, nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to taxation shall be taxed in proportion to its value."

Section 1 of the act approved July 30, 1886, (24 Stat. 170,) provides:

"That the legislatures of the Territories of the United States now or hereafter to be organized shall not pass local or special laws in any of the following enumerated cases, that is to say:

* * * * * *

"For the assessment and collection of taxes for Territorial, county, township or road purposes."

The main objection offered to the act of 1899 is that it results in a violation of the rule of uniformity which, as appellants allege, must exist in the same taxing district with reference to the same kind of property. The appellants contend that the Indian reservation is, for taxing purposes, a part of the county of Noble, and therefore part of the same taxing district as that county, and that the taxation under the act of 1899, for that reason, violates the rule of uniformity above referred to. As a basis for the contention that it is the same taxing district, it is maintained that the order of the Supreme Court made by virtue of section 9, of the act of 1890, attaching the reservation to Noble County for judicial purposes, made it a part of the judicial district of that county, and that the subsequent act of the legislature in substance placed the reservation under the general taxing jurisdiction of Noble County, and therefore made it a part of the same taxing district, and, being a part of the same district, the personal property in the reservation must be taxed at the same rate, and for all the purposes that personal property is taxed in the organized county of Noble.

It must be remembered at the outset that the reservation was never any part of Noble County, for the legislature had no power to make it such. (*Thomas* v. *Gay*, 169 U. S. 264, 275.) It was, as its name implies, a reservation set apart by the general government as a home for the Indians, and as such it formed no part of any organized county. Although, by reason

of the act of 1895, the personal property in the reservation was subject to taxation in the organized county to which it was attached for judicial purposes, but of which it formed no part, yet that act did not thereby make the reservation a part of the same taxing district as the county. The act of 1895 (and that of 1899) reached for taxation the owners of cattle, or any other personal property situated in the reservation, and that was the full effect of each act. All other property than above described was left untouched, and, we assume, could not have been taxed if owned by Indians, by reason of the treaties or agreements under which the reservation was set apart for the use of such Indians. The right of taxation in the reservation was not as full and entire, even under the act of 1895, as it is in an organized county. This is a most important, if not conclusive, distinction, between the organized county and the reservation when considering whether one and the same taxing district has been created by legislation which does not in terms purport to create it. That legislation was only for the purpose of thereby reaching for taxation a certain class of property in the reservation, and the whole balance that was in the reservation was left untouched. What is there in such legislation which necessarily creates a single taxing district, within which all property must be taxed alike?

Then, too, the property under the act of 1895 was assessed by a separate officer, and although the same officer who collected the taxes in the organized county was authorized and required to collect the taxes in the reservation, yet that fact did not make it part of the same taxing district so as to prevent the legislature from altering the proportion of the taxes which the owner of property in the reservation should be liable to pay as compared with the owner of property in the organized county to which it was attached for certain purposes only. It was simply a convenient method of collecting the taxes on property in the reservation; but the legislature was not thereby prevented from exercising the right to recognize the difference between property situated within an organized county and that which was situated in a reservation, and to make a difference in the rate of taxation in the two cases. If a separate taxing district was not created under the act of 1895, still less can it be contended that one was created by the act of 1899, which enacted a different rate of taxation than prevailed in Noble County.

Even the assessment of the same amount of taxes and their collection by the same officers that acted for the organized county would not necessarily render the reservation part of the same taxing district as the organized county. The material and important fact remains that the reservation is no part of the county, but is a totally distinct and separate domain, set apart for a home for Indians under the care and custody of the general

government, and that taxation therein is permitted only to a limited extent and upon certain kinds of property, not including Indians or their property; and the imposition and collection of those taxes which are permitted do not thereby render the reservation a part of the same taxing district as the organized county to which it is attached for judicial purposes. The difference between the two domains, the reservation and the organized county, is radical and wide. The lands in the former are, as we have said, mostly wild and uncultivated and used principally for grazing purposes, and the domain is the home of a different and distinct race from that occupying the organized county, the inhabitants of which are of civilized races, following the customs of civilized life, and in almost everything differing from their Indian neighbors. Property therein is clearly very differently placed than the same kind in an organized county. Those who live and own property in an organized county receive more benefit from the taxes levied for general purposes than do the owners of property located in a reservation. The act of 1899 makes certain personal property in the reservations bear its proportion of the burdens of taxation for Territorial and court purposes, from which such property derives some benefit. The owners of such personal property can derive very little, if any, benefit from the taxes raised for other purposes than those just mentioned. There is no township government existing there; no provision for the organization of school and road districts or for the establishment of other municipal governments, and hence it may be seen that, even assuming the power of the legislature to tax for all such purposes at the same rate as in an organized county, and to provide for the collection and payment of such taxes into the county treasury for disbursement for county purposes, yet still the injustice of such a rate of taxation would naturally appeal to the legislature and result in some legislation of the kind passed in 1899. The Territorial legislature has evidently recognized that fact and enacted that statute in consequence.

All this goes to show the legislature never intended to create a single taxing district of an organized county and a reservation composed of such different materials. As further evidence of the substantial difference between the two places, attention is called to the fact that the general laws providing for taxation in an organized county do not authorize such taxation in a reservation, even after it has been attached to a county for judicial purposes. There must be special legislative authority for it. (*Wagoner* v. *Evans*, 170 U. S. 588, 592.)

Whether the legislature by the act of 1897, providing the method of thereafter making assessments in townships by means of one assessor for each county, did thereby repeal the provision in the act of 1895, in relation to a special assessor for the Indian reservations, we do not determine, because even if such were the case and the assessor for the county were

the one to make the assessment in the reservations also, the mere fact of the change of the officer who was to make the assessment did not on that account make a reservation part of the same taxing district as the county to which it was attached for judicial purposes, within the meaning of the rule requiring uniformity of taxation within the same taxing district, assuming such rule to apply to the Territory named.

The foundation of the rule which may be said generally to obtain, that there shall be uniformity in taxation of the same kind of property in the same taxing district, rests on the assumption that in such district the circumstances regarding the property to be taxed are ordinarily the same in substance, although there may, and necessarily must be, some differences as to the extent to which the different owners of property may be benefited by the taxes collected thereon, and it is to be assumed that an alteration as to rate would work an unjust and illegal discrimination in taxing property situated alike. When the difference is deep and radical between the two domains in which the same kind of property may be situated, the law which makes them one district for taxation, so that all the property of the same kind in the same district must be taxed alike, and no reasonable distinction be permitted, must itself be so plain and urgent that no other intention can be suggested. No such case is now before us.

It is true the taxation in the reservation under the act of 1895 was for all purposes, and this court held that the act was not for that reason an illegal exercise of legislative power. It was recognized that there were differences in the amount of benefits derived from such taxation by the organized county as compared with the reservation, but it was not thought that, for that reason, the law was invalid. (*Thomas* v. *Gay*, *supra*.) It was a matter of legislative discretion with which the courts had in general no concern.

It has not, however, been held that the legislature could not recognize the difference in circumstances and provide for a different rate of taxation for property in the reservation from that levied on property in the organized county to which the reservation was attached for judicial purposes. The power to make this distinction does not depend upon the existence of a separate officer to assess or to collect the tax.

If it required special legislative authority to tax at all, how can it reasonably be maintained by the taxing officer that the act which provides for the taxation, although at a reduced rate, is illegal? And if an act were once passed which authorized the same rate of taxation as in the organized county, could not the legislature repeal it? And if it could repeal, why could it not modify it by reducing the rate of taxation, although not totally exempting property from all taxation? If the legislature had repealed the act of 1895, and had passed no other, there plainly would be in that case no law for taxing the property in the reservation.

If subsequently it passed an act for the taxation of such property at a reduced rate from that existing in the organized county, it could not be said there was any exemption from taxation, but on the contrary it would be the case of an act providing for taxation.

The only answer made by the appellants is the assumed fact that all property of the same kind in the same taxing district of this Territory must, in all circumstances, be taxed at the same rate or must be wholly exempted, and that no discrimination can, in any event or under any circumstances, be permitted; otherwise there is a discrimination which is illegal. But if it be not in the same taxing district the reasoning fails, even if otherwise good.

The recognition by the legislature of the difference in the situation between Noble County proper and the Indian reservation attached to it for judicial purposes, and the taxation of the property in the latter at a different rate from that in the county, may be upheld upon the same principle as in the case of general city taxation, where the whole of the city is first assessed equally as a taxing district and then the more compact portions thereof are assessed at a greater rate and required to pay a greater proportionate share of the expense of the city government, because of the fact of the greater proportionate protection and benefit afforded by the police and fire departments and other like matters, to the portions of the city thus subjected to greater taxation.

Cooley, in his work on Taxation, (p. 118,) affirms the validity of such legislation, and refers in a note (3) to cases which establish it, and he dissents from the view taken by the Wisconsin court in *Knowlton* v. *Supervisors &c.*, (9 Wis. 410, 421.) Where the difference between the different portions of territory is plain and palpable the right of the legislature to recognize that difference and to provide for a difference in taxation cannot be denied without imposing, as said by Judge Cooley, restraints upon the constitutional power of the legislature, which cannot in reason be justified. Whether there is such a difference would generally be for the legislature to determine, although we would not say that the courts could not, in any possible state of facts, review that determination. In the case before us the legislative act providing for this difference in taxation amounts, in itself, to a provision for a different taxing district within the principles just stated, and certainly no one would say that it was not a most reasonable and just recognition of a plain difference in circumstances, which ought to lead to a difference in the proportion of taxation between the two places.

Whether the proper officer made the assessment or not is immaterial in this case. The defendants in error have not only not appealed from the decree of the Supreme Court, but they have paid the taxes assessed for the

purposes mentioned in the act of 1899, and do not seek to recover them back in this case, and the question is of no consequence to them.

In the view we take of the case we are unable to see that any provision of the act of Congress of 1890, organizing the Territory, or the other act of 1886, in regard to Territories then or thereafter to be organized, has been violated by the Territorial act of 1899, and the judgment of the Supreme Court of Oklahoma is, therefore,

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.